CORRECTED COPY

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-6527

JAMES INGRAHAM, BY HIS MOTHER AND NEXT FRIEND, ELOISE INGRAHAM, ET AL., PETITIONERS

v.

WILLIE J. WRIGHT, I, ET AL., RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 6, 1976
CERTIORARI GRANTED MAY 24, 1976

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United States District Court, Southern District of Florida

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In the United States District Court in and for the Southern District of Florida

(Case No. 71-23)

ELOISE INGRAHAM AS NEXT FRIEND AND MOTHER OF JAMES INGRAHAM, A MINOR, AND WILLIE EVERETT AS NEXT FRIEND AND FATHER OF ROOSEVELT ANDREWS, A MINOR, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

vs.

WILLIE J. WRIGHT, I, INDIVIDUALLY AND AS PRINCIPAL OF CHARLES R. DREW JUNIOR HIGH SCHOOL, LEMMIE DELIFORD, INDIVIDUALLY AND AS ASSISTANT PRINCIPAL FOR ADMINISTRATION AT CHARLES R. DREW JUNIOR HIGH SCHOOL, SOLOMON BARNES, INDIVIDUALLY AND AS ASSISTANT TO THE PRINCIPAL OF CHARLES R. DREW JUNIOR HIGH SCHOOL, EDWARD L. WHIGHAM, INDIVIDUALLY AND AS SUPERINTENDENT OF THE DADE COUNTY SCHOOL SYSTEM AND THE DADE COUNTY SCHOOL BOARD, DEFENDANTS

Complaint

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343. This action arises under the First, Fourth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. §§ 1981–1988. The matter in controversy exceeds the sum of $10,000 exclusive of interest and costs, and the action seeks damages and both injunctive and declaratory relief pursuant to 42 U.S.C. §§ 1981–1988 and 28 U.S.C. §§ 2201 and 2202, respectively.

2. Plaintiff, JAMES INGRAHAM, Jr., is a fourteen year old eighth grade student at Charles H. Drew Junior High School located in Miami, Dade County, Florida.

3. Plaintiff, ROOSEVELT ANDREWS, is a fifteen year old ninth grade student at Charles R. Drew Junior High School.

4. Defendant, WILLIE J. WRIGHT, I, is the Principal of Charles R. Drew Junior High School having commenced his principalship during the September 1970 school term.

5. Defendant, LEMMIE DELIFORD, is Assistant Principal for Administration at Charles R. Drew Junior High School.

6. Defendant, SOLOMON BARNES, is Assistant to the Principal of Charles R. Drew Junior High School.

7. Defendant, DADE COUNTY SCHOOL BOARD, is a body corporate charged with responsibility of establishing, organizing and operating the Dade County school system. Pursuant to F.S. §§ 231.09(3), 232.25, 232.26 and 232.27, defendant, the DADE COUNTY SCHOOL BOARD, promulgated its policy No. 5144 (attached hereto and made a part hereof as Exhibit A) relating to the use of corporal punishment as a means of behavioral control in the public schools of Dade County, Florida.

8. Defendant, EDWARD L. WHIGHAM, is the Superintendent and highest administrative officer in the Dade County school system.

9. In September 1970, or shortly prior thereto, defendants, WRIGHT, DELIFORD, BARNES, and, upon information and belief, WHIGHAM (and/or the latter's agents, servants or employees) conspired to initiate and did initiate a harsh, arbitrary, inflexible and brutal corporal punishment policy calculated to create an atmosphere of dread, fear and anxiety at Charles R. Drew Junior High School for the ostensible purpose of maintaining discipline and order.

10. Pursuant to the tactics of terror conceived in September 1970, defendants, WRIGHT, DELIFORD and BARNES, have engaged in a pattern and practice of indiscriminate threats, assaults and beatings upon students at Charles R. Drew Junior High School. These punitive measures are often and regularly administered:

a. For the least infraction or appearance of wrong doing without any prior proceeding to determine whether or not the student has in fact engaged in wrongful conduct or whether there were any mitigating factors which should be taken into account before administering punishment; i.e., without any semblance of procedural due process of law.

b. Without first seeking other means of regulating or controlling the behavior of the alleged wrong doer.

c. Without first conferring with the victim's teacher or other persons who may have had personal knowledge of the alleged wrongful behavior.

d. In surroundings calculated to embarrass, demean and degrade the victim, e.g., the boys bathroom, the school hallways.

e. In the presence of other students, calculated to embarrass the victim and hold him up to shame and ridicule by his peer group.

f. With a hard wooden instrument calculated to produce physical injury.

g. Without the personal prior knowledge and approval of defendant WRIGHT, but pursuant to authority delegated by him to defendants, BARNES and DELIFORD.

h. By parading through the hallways and classrooms, while classes are in session, carrying a large wooden weapon in a threatening manner.

i. Without adult witnesses present other than the person administering the punishment.

j. With vindictiveness.

11. Upon information and belief, the defendant WHIGHAM and/or his agents and employees in the administrative hierarchy of the Dade County school system have knowingly lent their tacit or explicit support and approval to the methods of discipline and behavioral control described herein.

First Cause of Action

12. On or about October 6, 1970, at Charles R. Drew Junior High School, defendants, WRIGHT, DELIFORD and BARNES, under color of state law, conspired to administer an unprovoked and unjustified beating and assault upon plaintiff INGRAHAM.

13. On or about October 6, 1970, at Charles R. Drew Junior High School, the aforesaid defendants, WRIGHT, DELIFORD and BARNES, while holding plaintiff in an embarrassing and immoble position, did there and then strike him repeatedly and violently with a wooden instrument.

14. When plaintiff INGRAHAM thereafter attempted to leave Charles R. Drew Junior High School to minister to his

wounds defendant WRIGHT threatened him with further physical injury to be administered to plaintiff INGRAHAM's head.

15. As a direct and proximate result of the beating administered to him, plaintiff INGRAHAM was injured in and about his body, suffered pain and emotional upset, embarrassment and anxiety therefrom, incurred medical expenses and treatment of such injuries, suffered physical handicap to the extent that his normal abilities as a youth and student were impaired; said injuries are either permanent or continuing in their nature, and plaintiff INGRAHAM will suffer such losses and impairment in the future.

SECOND CAUSE OF ACTION

16. On or about October 1, 1970, plaintiff ROOSEVELT ANDREWS was among approximately fifteen students each of whom was beaten in the presence of the others by defendant BARNES with a wooden instrument in the boys bathroom of Charles R. Drew Junior High School. No adult witnesses were present during the beatings which were severe enough to cause virtually all of the victims to cry out in pain. Plaintiff ANDREWS was struck by defendant BARNES on the back, legs, buttocks and arms. The blows were administered with such force as to propel plaintiff ANDREWS forward, causing him to strike the bridge of his nose on a protruding bathroom fixture. The beating received by plaintiff ANDREWS was unprovoked and unjustified, and was administered without the prior knowledge or approval of the defendant WRIGHT.

17. Subsequent to the beating on October 1, 1970 and prior to October 20, 1970, plaintiff ANDREWS' father and next friend, WILLIE EVERETT, informed defendant DELIFORD that he did not approve of the corporal punishment method of discipline as administered by school officials to his son and that such officials should thereafter refrain from assaulting, beating or otherwise physically injuring plaintiff ANDREWS.

18. On or about October 20, 1970, despite WILLIE EVERETT's instructions to the contrary, defendant WRIGHT, in the presence of both defendants BARNES and DELIFORD, struck plaintiff ANDREWS numerous and repeated times with a wooden implement.

19. As a direct and proximate result of the beating administered to him, plaintiff ANDREWS was injured in and about his body, suffered pain and emotional embarrassment and anxiety therefrom, incurred medical expenses and treatment of such injuries, suffered physical handicap to the extent that his normal abilities as a youth and student were impaired.

THIRD CAUSE OF ACTION

20. This is a class action authorized by Rule 23 of the Federal Rules of Civil Procedure. The class which plaintiffs represent are all students of the Dade County school system who are subject to the corporal punishment policies issued by the defendant, DADE COUNTY SCHOOL BOARD. The class is so numerous as to make joinder of all members thereof impracticable. Defendants have acted on grounds generally applicable to the class thereby making appropriate final injunctive relief and/or corresponding declaratory relief with respect to the class. There are questions of law and fact common to the members of the class. Plaintiffs will protect and represent the interests of the class.

21. The defendants have promulgated no list of school regulations or standards of conduct, violation of which will result in corporal punishment. There is no schedule of maximum punishments. As a result, students have no notice of what offense will result in corporal punishment or of the amount of punishment which they can expect. Indeed, punishment appears to be imposed haphazardly and according to whim and caprice. Identical offenses are corporally punished or not, and/or are corporally punished with degrees of severity, apparently according to the mood of the school official. The regulations thus provide for punishment of limitless, undefined crimes, by limitless, undefined punishments. Such regulations permit and even encourage widely disparate treatment of identical situations and conduct.

22. The infliction of corporal punishment by public school officials on students on its face abridges the "privileges and immunities" of all such students, as well as the plaintiffs on the facts of the within action, including their *rights* to physical integrity, dignity of personality, and freedom from arbitrary

authority in violation of the Fourth, Ninth and Fourteenth Amendments to the United States Constitution.

23. The infliction of corporal punishment on its face deprives all students as well as plaintiffs on the facts of the within action of "liberty without due process of law" in violation of the Fourteenth Amendment to the United States Constitution since it is arbitrary, capricious and unrelated to achieving any legitimate educational purposes. On the contrary, the use of corporal punishment in the schools results in a hostile reaction to authority, breeds further violence and interferes with the educational process and academic inquiry.

24. The infliction of corporal punishment on public school students on its face, and as applied in the instant case, constitutes "cruel and unusual punishment" since its application is grossly disproportionate to any misconduct plaintiffs may have engaged in, in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States.

25. Defendants' failure to provide students with any procedural safeguards before inflicting corporal punishment on them, including adequate notice of alleged misconduct, hearing, examination and cross-examination, representation and notice of rights constitutes summary punishment and deprives students of "liberty without due process of law" in violation of the Fourteenth Amendment to the United States Constitution.

26. As a direct and proximate result of defendants' conduct in executing, permitting and/or failing to prevent the inflicting of corporal punishment pursuant to the standards adopted by the defendants to govern the inflicting of corporal punishment, plaintiffs-students have been deprived of their rights under the Constitution of the United States for the reasons stated in paragraphs 22 and 25 above.

27. Defendants' past and continuing infliction of corporal punishment on plaintiffs and members of their class has caused and continues to cause them great and irreparable injury by greatly damaging their education, causing them severe and permanent physical and emotional injury, violating their physical integrity, and destroying their dignity of personality. Further defendants' past and continuing infliction of corporal punishment on plaintiffs and members of their class will irreparably injure their fundamental constitutional rights to be free from arbitrary and capricious governmental action and

will irreparably injure the public's interest in insuring its fundamental laws are obeyed by government.

28. Plaintiffs have no adequate remedy at law to prevent the continued implementation of the corporal punishment policy of the defendants which will continue to cause and threaten to cause irreparable injury to the plaintiffs and the members of their class unless enjoined by this Court.

WHEREFORE, and for the foregoing reasons, plaintiffs respectfully pray as follows:

a. That the Court assume jurisdiction of this cause pursuant to 28 U.S.C. § § 1331 and 1343.

b. That the Court will enter an Order determining the class to be all students of the Dade County school system subject to the corporal punishment poicies of the defendants.

c. That the Court will enter a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining and restraining the defendants, their agents, servants and employees from inflicting any form of corporal punishment upon any student at Charles R. Drew Junior High School.

d. That the Court will enter a declaratory judgment declaring that the corporal punishment policy of the defendants' Policy No. 5144 contravenes the First, Fourth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution.

e. That the Court will enter a declaratory judgment declaring that any form of corporal punishment imposed on students in the Dade County school is unconstitutional under the First, Fourth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution.

f. That the Court will issue a Permanent Injunction enjoining and restraining the defendants, their agents, servants and employees from inflicting any form of corporal punishment upon any student in the Dade County school system.

g. That judgment be entered against the defendants jointly and severally in both their individual and representative capacities in an amount in excess of $50,000 as to each named plaintiff as compensatory and punitive damages, plus interest and costs.

h. For such other relief as the Court deems just and proper. Plaintiffs demand jury trial for all matters triable by jury as a matter of right.

Respectfully submitted,

BRUCE S. ROGOW, Esq.,
WILKIE D. FERGUSON, Esq.,
ALFRED FEINBERG, Esq.,
Economic Opportunity Legal Services Program, Inc.,
395 N.W. First Street,
Miami, Florida 33128.
RICHARD HAMAR, Esq.,
4844 N.W. Seventh Avenue,
Miami, Florida 33127.
Attorneys for Plaintiffs.
By Alfred Feinberg,
ALFRED FEINBERG, Esq.,

EXHIBIT A.—ELEMENTARY AND SECONDARY

Discipline/Punishment: Corporal Punishment

I. DISCIPLINE

Successful learning is contingent upon the self-discipline of the students as well as upon the group discipline which supports the learning climate.

Student infractions of rules and departures from good behavior should be studied, and corrective action should be taken as a result of identification of reasons for improper behavior before punishment is invoked. The only exception to this logical process is in the case of erratic behavior of a student which may affect the safety of himself or others. At this point, it is necessary to act immediately and probe for causal reasons as soon as possible. A study of individual differences, conference with the pupil and parent, and assistance from the principal, pupil personnel and other school resource specialists may aid the teacher in attempting to help a student correct behavior patterns which are retarding his development or interfering with the rights of others. The principal may also suggest seeking assistance from other resources in the school district offices or in the community.

A teacher or principal stands substantially in loco parentis with the child; that, coupled with the authority set forth in *Florida Statutes,* vests them with the power to establish rules for discipline, develop understandings for the enforcement of obedience, and, as a concomitant, power to enforce the classroom regulations.

II. PUNISHMENT: CORPORAL PUNISHMENT

Punishment in the general sense is the infliction of a penalty for an offense. Corporal punishment is generally applied to the body of the offender or is physical punishment as opposed to other forms of punishment and is administered as a means of changing the behavior of the student. Therefore, it is important to analyze whether or not this goal will be accomplished by such action.

Corporal punishment may be used in the case where other means of seeking cooperation from the student have failed. If it appears that corporal punishment is likely to become necessary, the teacher must confer with the principal. The principal will determine the necessity for corporal punishment and designate the time, place, and the person to administer said punishment. In any case, the student should understand clearly the seriousness of the offense and the reason for the punishment. Care should be taken that the period of time between the offense and the punishment is not so long as to cause undue anxiety in the pupil. The punishment must be administered in kindness and in the presence of another adult, at a time and under conditions not calculated to hold the student up to ridicule or shame.

In the administering of corporal punishment, no instrument shall be used that will produce physical injury to the student, and no part of the body above the waist or below the knees may be struck. The person administering the corporal punishment must realize his own personal liabilities if the student being given corporal punishment is physically injured.

Corporal punishment should never be administered to a student whom school personnel know to be under psychological or medical treatment unless there has been a pre-conference with the school psychologist or the physician.

(See also Regulation 5150, Control of Student Behavior.)

Legal Reference: *Florida Statutes,* 231.09(3), 232.25, 232.26 and 232.27.

[Filed, February 8, 1971, Joseph I. Bogard, Clerk, U.S. Dist. Ct., Southern Dist. of Fla., Miami, Fla.]

In the United States District Court in and for the Southern District of Florida, Miami Division

(No. 71–23–Civ-JE)

ELOISE INGRAHAM, ET AL., PLAINTIFFS

vs.

WILLIE J. WRIGHT, ET AL., DEFENDANTS

Answer

COME NOW the Defendants, by and through their undersigned attorneys, and for answer to the Complaint herein state as follows:

(1) Defendants deny each and every allegation set forth in Paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 of the Complaint.

(2) Defendants admit that they have promulgated no list of school regulations, violation of which will result in corporal punishment. Except as so admitted, Defendants deny the allegations of Paragraph 21 of the Complaint.

(3) Defendants deny the allegations of Paragraphs 22, 23, 24, 25, 26, 27 and 28.

WHEREFORE, Defendants pray that the above styled action be dismissed with costs to the Defendants and that such other and further relief as may be just and proper may be granted.

DATED this 5 day of February, 1971.

BOLLES, GOODWIN, RYSKAMP & WARE,
Attorneys for Defendants,
1410 N.E. Second Avenue,
Miami, Florida 33132.

By James T. Schoenbrod
JAMES T. SCHOENBROD,
Of Counsel.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Answer was mailed to ALFRED FEINBERG, ESQ., Attorney for Plaintiffs, Legal Services Program,

Inc., 395 N.W. First Street, Room 202, Miami, Florida, this 5 day of February, 1971.

James T. Schoenbrod.

EXHIBIT "A".—MEMORANDUM

AUGUST 19, 1970.

TO: All Teachers.
FROM: Willie J. Wright, I, Principal, Charles R. Drew, Junior High School.
RE BOARD POLICY NO. 5114 "SUSPENSION, EXPULSION AND EXCLUSION", BOARD POLICY NO. 5144 "DISCIPLINE/PUNISHMENT: CORPORAL PUNISHMENT", BOARD POLICY NO. 5150 "CONTROL OF STUDENT BEHAVIOR", BOARD POLICY NO. 5132 "DRESS".

ELEMENTARY AND SECONDARY

SUSPENSION, EXPULSION, AND EXCLUSION

Suspension or explusion of a pupil from the public schools has very serious consequences for that student in view of the increasing significance that society places upon education. A student cannot be deprived of his education without due process of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America. Attendance at the public school does not signify a waiver of the student's constitutional rights. It is essential that school administrators be aware that upon initiating disciplinary proceedings against a pupil, they must proceed in a fixed order. A fair hearing procedure must be afforded to the pupil in any type of action which may result in suspension or expulsion.

Suspension and expulsion are measures to be employed only after all available school and support services have been considered, or when school personnel are unable to cope constructively with pupil misconduct, or where conditions, including emergency conditions, require immediate suspension. Suspension from school may be authorized by the principal and the Superintendent of Schools for a short period of time. Expulsion from the school requires action of the Dade County School Board to effect and rescind the status.

Expulsion from the regular program of the Dade County Public Schools is defined as expulsion from the normal kindergarten through twelfth-grade (K–12) program; and expulsion from the Dade County Public Schools is defined as expulsion from the normal kindergarten through twelfth-grade (K–12) program and all other programs offered by the Dade County Public Schools.

PRINCIPAL'S AUTHORITY

The principal shall have the authority to:

1. Suspend a pupil from school for a period of not more than ten school days on any one suspension for any breach of the school's established conduct code or for any reason provided by state law.
2. Recommend to the Superintendent of Schools, with the approval of the appropriate district superintendent. That the pupil's suspension:
   a) be extended by the Superintendent of Schools up to an additional 30 school days.
   b) be extended by the Superintendent of Schools up to an additional 30 school days and that the Dade County School Board expel permanently or for a lesser period of time. A recommendation for expulsion shall be in a written narrative form.

The extent of the school administrator's authority in specific situations remains a matter of interpretation of the inherent function of his office and of the guidelines laid down by the State Legislature and the Dade County School Board.

SUPERINTENDENT'S AUTHORITY

The Superintendent of Schools shall have the authority to:

1. Extend a principal's suspension of a pupil up to an additional 30 school days, and to assign any pupil so suspended to an individually designated program or other special placement.
2. Recommend to the Board that a pupil be expelled permanently or for a lesser period of time.
3. Recommend assignment of a pupil to be expelled from his regular school to an individually designated program or to other special placement.

EXPULSION BY THE DADE COUNTY SCHOOL BOARD

Any pupil subject to the control of the school shall be subject to expulsion by the School Board upon the recomendation of the Superintendent of Schools when the pupil has:

1. Possessed, used, handled, or transmitted a substance capable of modifying mood and/ behavior.
2. Possessed, used, handled, or transmitted a weapon including, but not limited to, a gun, knife, razor, explosives, ice pick, club, or paddle.
3. Used any article as a weapon or in a manner reasonable calculated to threaten any person.
4. Committed a serious breach of conduct including, but not limited to, an assault on school personnel or on another pupil, a lewd or lascivious act, arson, vandalism, or any other act which disrupt or tends to disrupt the orderly conduct of the school or school activity.
5. Engaged in less serious but continuing misconduct including, but not limited to, the use of profane, obscene, or abusive language, or other acts that are detrimental to the educational function of the school. Any expulsion recommendation based on such misconduct shall include a documented report by the principal on the corrective measures taken prior to his recommendation of expulsion.

PUPIL EXPULSION HEARING PROCEDURES

The following procedures will be observed when the Superintendent of Schools recommends a pupil for expulsion:

The Superintendent of Schools shall, by certified mail or by hand delivery by an appropriate staff member, notify the pupil's parents or guardian of school record that he is recommending that their child be expelled from the Dade County Public Schools. This letter shall set forth the charges against the student and advise the parent or guardian that he has five days in which to request a hearing on those charges before a hearing examiner.

Should the parent or guardian not request a hearing within the specified time, the Board shall act upon the Superintendent's recommendation at the first available Board meeting. Said recommendation shall set forth a brief statement of the pupil's act or acts which warrant expulsion.

Should the pupil's parent request a hearing, the hearing shall be conducted before one of the hearing examiners appointed by the Dade County School Board and shall be conducted under the rules and procedures for administrative hearings adopted by Board Resolution 63–19. (See Regulation 4119.5.)

EXCLUSION: RELEASE FROM COMPULSORY SCHOOL ATTENDANCE

Certificates of exemption for children under 16 years of age are authorized under certain cases. Students within the compulsory attendance age limits may be issued valid certificates of exemption by the Superintendent, exempting them from attending school for one of the following reasons:

1. Physical and mental disturbance
2. Distance exemption
3. Employment exemption
4. Judicial exemption

A certificate of exemption shall cease to be valid at the end of the school year in which it is issued.

DISCIPLINE/PUNISHMENT: CORPORAL PUNISHMENT

I. Discipline

Successful learning is contingent upon the self-discipline of the student as well as upon the group discipline which supports the learning climate.

Student infractions of rules and departures from good behavior should be studied, and corrective action should be taken as a result of identification of reasons for improper behavior before punishment is invoked. The only exception to this logical process is in the case of erratic behavior of a student which may affect the safety of himself or others. At this point, it is necessary to act immediately and probe for causal reasons as soon as possible. A study of individual differences, conferences with the pupil and parent, and assistance from the principal, pupil personnel and other school resource specialists may aid the teacher in attempting to help a student correct behavior patterns which are retarding his development or interfering with the rights of others. The principal may also suggest seeking assistance from other resources in the school district offices or in the community.

A teacher or principal stands substantially in loco parentis with the child; that, coupled with the authority set forth in

Florida Statutes, vests them with the power to establish rules for discipline, develop understandings for the enforcement of obedience, and, as a concomitant, power to enforce the classroom regulations.

II. Punishment: Corporal Punishment

Punishment in the general sense is the inflicting of a penalty for an offense. Corporal punishment is generally applied to the body of the offender or is physical punishment as opposed to other forms of punishment and is administered as a means of changing the behavior of the student. Therefore, it is important to analyze whether or not this goal will be accomplished by such action.

Corporal punishment may be used in the case where other means of seeking cooperation from the student have failed. If it appears that corporal punishment is likely to become necessary, the teacher must confer with the principal. The principal will determine the necessity for corporal punishment and designate the time, place, and the person to administer said punishment. In any case, the student should understand clearly the seriousness of the offense and the reason for the punishment. Care should be taken that the period of time between the offense and the punishment must be administered in kindness and in the presence of another adult, at a time and under conditions not calculated to hold the student up to ridicule or shame.

In the administering of corporal punishment, no instrument shall be used that will produce physical injury to the student, and no part of the body above the waist or below the knees may be struck. The person administering the corporal punishment must realize his own personal liabilities if the student being given corporal punishment is physically injured.

Corporal punishment should never be administered to a student whom school personnel know to be under psychological or medical treatment unless there has been a pre-conference with the school psychologist or the physician.

CONTROL OF STUDENT BEHAVIOR

The schools are established for the benefit of all students. The educational purposes of the schools are accomplished best in a climate of student behavior which is socially acceptable and conducive to the learning and teaching process. Student behav-

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ior which disrupts this process or which infringes upon the rights of other individuals will not be tolerated.

The School Board reaffirms its support of the administrative staff and teachers in taking all necessary steps to enforce and implement all Board policies and regulations pertaining to control of student behavior. Important among these policies are those in the areas of conduct, corporal punishment, suspensions and expulsions, and climate for learning.

The School Board directs that:

1. The Superintendent, through the Security Department, shall pursue the investigation and assist in the subsequent prosecution of any adults inciting students to perform violent and unlawful acts in the schools; and

2. That each individual teacher shall be granted full disciplinary authority over every student in his classroom, in accordance with Florida Statutes, Board Policies and Regulations, and administrative regulations.

DRESS

The principal of each school shall provide leadership and direction in developing regulations relating to dress and behavior for the students in his school.

Cleanliness, personal appearance, and proper dress are important in setting the pattern of school and social conduct. There is considerable evidence to indicate a close relationship between pupil dress and pupil behavior. The standards of dress for school should conform to the standards generally accepted by the community. The administration is encouraged to invite staff, students, and parents to participate in setting up acceptable minimum standards for student dress.

Students who come to school without proper attention having been given to personal cleanliness or neatness of dress may be sent home to be properly prepared for school, or shall be required to prepare themselves for the schoolroom before entering.

Students should not wear clothing or hair styles that can be hazardous to them in their school activities, such as shop, lab work, physical education, and art. Grooming and dress which prevent the student from doing his best work because of blocked vision or restricted movement should be discouraged, as should dress styles that create, or are likely to create, a disruption of

classroom order. Articles of clothing which cause excessive maintenance problems of school property are unacceptable.

United States District Court, Southern District of Florida

(Case Number 71-23-CIV-JE)

ELOISE INGRAHAM, ET AL., PLAINTIFFS

vs.

WILLIE J. WRIGHT, ET EL., DEFENDANTS

Order

THIS CAUSE is before the Court on Plaintiffs' Motion to Compel Discovery filed September 30th, 1971; Plaintiff' Renewed Motion to Determine the Class; and Plaintiffs' Renewed Motion to Produce Income Tax Returns, etc. The Court has considered the motions and the record in the cause. Therefore, it is

ORDERED and ADJUDGED that:

1. Plaintiffs' Motion to Compel Discovery filed September 30th, 1971 is granted. Defendants shall provide Plaintiffs with the requested documents, by mail, within ten days from the date of this Order, said documents to be copied by Plaintiffs and returned to Defendants by mail.

2. Plaintiffs' third cause of action of the Complaint is determined to be a class action under Rule 23(b)(2) and pursuant to Rule 23(c)(1), the members of the class are determined to be as follows: "All students of the Dade County School system who are subject to the corporal punishment policies issued by the Defendant, Dade County School Board, with the exception of Miss Karen Grumwell, who specifically requested that she not be made a part of the class."

3. Plaintiffs' Renewed Motion to Produce Income Tax Returns and a Statement of Net Worth of Defendants Wright, Deliford and Barnes is granted to the extent that same shall be produced to the Court.

DONE and ORDERED at Miami, in the Southern District of Florida this 16th day of May, 1972.

JOE EATON,
United States District Judge.

In the United States District Court in and for the Southern District of Florida

(Case No. 71–23–Civ–JE)

ELOISE INGRAHAM, ET AL., PLAINTIFFS

vs.

WILLIE J. WRIGHT, I., ET EL., DEFENDANTS

Stipulation

Pursuant to the Court's suggestion, the parties through their undersigned counsel do hereby Stipulate and agree that the following summaries of the anticipated testimony of Dr. Fernando Milanes and Dr. Carlos Gamez would constitute the sum and substance of their testimony which Plaintiffs intend to offer into evidence in support of Plaintiffs' first cause of action. Taken together with all of the evidence introduced by Plaintiffs in support of Plaintiffs' third cause of action, the testimony of Drs. Milanes and Gamez constitutes all of the evidence which Plaintiffs would offer in their case in chief in support of Plaintiffs' first and second causes of action. Defendants stipulate to the summaries of testimony set forth below without conceding the truth or falsity of said testimony.

ANTICIPATED TESTIMONY OF DR. FERNANDO MILANES

1. Dr. Fernando Milanes would testify that he practices medicine at the Veterans Administration Hospital, 1201 N. W. 16th Street. His home address is 8970 S. W. 56th Terrace. Dr. Milanes is not in private practice. He passed the Florida State Medical Boards in March, 1971 and is a member of the Dade County Medical Association, the Florida Medical Association, and the American Medical Association. From November 1, 1969 to October 31, 1970 Dr. Milanes interned in Family Medicine at Jackson Memorial Hospital. He is currently engaged in psychiatric residency and as of September 7, 1972 was Chief Resident in Psychiatry at the Veterans Administration Hospital.

2. Dr. Milanes would testify that on October 6, 1970 during the period of his internship he examined JAMES INGRAHAM

in the emergency room—primary care unit of Jackson Memorial Hospital. His testimony will show that JAMES INGRAHAM complained of pain to his buttocks and that Dr. Milanes, upon examining JAMES INGRAHAM's buttocks diagnosed the cause of the pain to be a hematoma.

3. Dr. Milanes' testimony will show that the area of pain was tender and large in size and that the temperature of the skin area of the hematoma was above normal which is a sign of inflammation often associated with hematoma.

4. The hematoma Dr. Milanes observed is consistent with a blow or a number of blows from a flat object administered to the buttocks.

5. Due to the injury caused to JAMES INGRAHAM's buttocks Dr. Milanes, will testify that he wrote a note excusing JAMES INGRAHAM from paticipation in Physical Education classes at school.

ANTICIPATED TESTIMONY OF DR. CARLOS GAMEZ

6. Dr. Carlos Gamez will testify that he passed the Florida State Medical Boards approximately one and one-half years ago. His specialty is Family Medicine and at the time he examined JAMES INGRAHAM he was a second year resident in his specialty at Jackson Memorial Hospital and at the Family Health Center. At the present time Dr. Gamez has offices at 1707 Coral Way.

7. Dr. Gamez will testify he examined JAMES INGRAHAM on October 9, 1970 at Jackson Memorial Hospital and again on October 14, 1970 at the Family Health Center. The patent's subjective signs of injury included a hematoma approximately six inches in diameter which was swollen, tender, and purplish in color. Additionally, there was serousness or fluid oozing from the hematoma.

8. The patient complained of pain to his buttocks and stated that he had been beaten with a paddle at school a number of times.

9. In Dr. Gamez' opinion the wound which he observed on the patient's buttocks is consistent with, or likely to have been caused by a number of forceful blows with a wooden instrument or paddle. Furthermore, the hematoma which was observed was likely to have been painful. It is Dr. Gamez' opinion that the observable injury, including the pain, would have likely persisted for approximately one week.

STIPULATION

The parties, by and through their undersigned counsel, do hereby stipulate as hereinabove set forth that the testimony summarized above would be the testimony of Drs. Milanes and Gamez respectively.

ALFRED FEINBERG,
Attorney for Plaintiffs, Legal Services of Greater Miami, Inc., 395 Northwest First Street, Suite 202, Miami, Florida 33128, Telephone—379-0822.

LELAND STANSELL,
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FRANK HOWARD,
Attorney for Defendants, Wright, Deliford, Barnes, Whigham, and the Dade County Board of Public Instruction, 1410 NE. Second Avenue, Miami, Florida.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail upon Frank Howard, Attorney for Defendants, Wright, Deliford, Barnes, Whigham, and the Dade County Board of Public Instruction, 1414 N.E. Second Avenue, Miami, Florida, Leland Stansell, Attorney for Defendants Wright and Deliford, 10th Floor, Biscayne Building, Miami, Florida 33130 this 29 day of January, 1973.

ALFRED FEINBERG,
Attorney for Plaintiffs.

In the District Court of the United States for the Southern District of Florida

No. 71-23-Civ-JE

ELOISE INGRAHAM, ET AL., PLAINTIFFS
vs.
WILLIE WRIGHT, ET AL., DEFENDANTS

[7] Mr. FEINBERG.

DIRECT EXAMINATION BY MR. FEINBERG:

Q. Please state your name and address.

A. Edward L. Whigham, 1339 Coral Way, Coral Gables.

Q. Please state your occupation, sir.

A. Superintendent of the Dade County Public Schools.

Q. How long have you been employed in that position?

A. I am beginning my fourth year.

Q. Beginning your fourth year as superintendent?

A. Yes.

[8-13] • • • • •

[14] Q. In theory, any student who committed any infraction of School Board policy in the school, he is not made to receive, or be, corporally punished; is that correct?

A. Yes; although I would say, here again, that it would depend on the specific circumstances involved.

[Mr. Feinberg continues reading:]

Q. It is possible that any student, no matter how minor the violation, would be corporally punished, based on the sound judgment of the principal; is that correct?

A. Yes; referring to that hypothetical situation.

Q. There is no list of infractions that will result in corporal punishment, as opposed to the other forms of punishment?

A. No.

Q. There are no means, in advance, of determining what was to be corporal punishment, as opposed to the other means?

A. No; there is no established——

Mr. FEINBERG. Page 19, Line 5:

Q. Is it not conceivable that two students [15] who have violated exactly the same rule in the same way and the same manner, can receive different forms of punishment?

A. If you are asking, there again, a hypothetical question.

Q. That's right.

A. This may be due to a difference in judgment and a difference in specific circumstances surrounding the incident.

Mr. HOWARD. That was the witness' answer?

Mr. FEINBERG. Yes.

Mr. HOWARD. Some of this, it is going to be hard to determine if it is a question or an answer.

The COURT. Do it any way you want to, Mr. Feinberg.

Mr. FEINBERG. What I am going to try to do, where it is obvious—at least to me—that the question and answer is not necessary, I won't say it.

If it appears to be confusing, I will try to say it.

Q. Might it also be due to differences in the psychological makeup of the principal who is [16] making the decision?

A. Yes; hypothetically, that might be possible.

Q. Conceivably it could be the same principal who decides two children who violated the same rule would receive different punishment?

A. Yes; because of circumstances surrounding those, there could be a difference.

Q. What would those differences be based upon?

A. I can't say. They might be based on attitude, past history, specific time and circumstances in which it occurred.

Q. You referred to past history.

Is there a requirement, before corporal punishment is administered, the child's past history be investi-

gated, to determine whether or not corporal punishment should be administered?

A. There, again, it depends upon the circumstances. There are certain things in past history; for example, if a youngster is under medical or psychological treatment, for example.

Mr. FEINBERG. Page 21, Line 4:

Q. How would a principal be able to [17] determine whether a child was under medical or psychological treatment if he didn't read all the files or have a photostatic memory?

A. If he did not know, he would have to have access to someone who is acquainted with this child.

Q. You are suggesting it is or it is not School Board policy to make this determination in advance?

I have not gotten an answer from you on that.

A. The policy says corporal punishment shall not be administered to students who are under medical or psychological treatment without consulting with the physician, or something to that effect.

Q. Does the School Board policy say anything about——

Mr. HOWARD. Excuse me. I just wanted the record to show that, based upon what the transcript shows, Dr. Whigham was testifying without having the policies in his hands. He was being asked these questions from memory.

Mr. FEINBERG. That's correct. I concede that.

[18] Q. Does the School Board policy say anything about administering corporal punishment to a child for whom the parent has directed the school not to administer corporal punishment?

A. No.

Mr. FEINBERG. Page 22, Line 1:

Q. Is there any informal policy concerning this issue?

A. You mean from the School Board?

Q. No; in the school system.

A. No.

Q. So a principal would be able—despite the parents' prior objections, a School Board principal would be able to determine to corporally punish a child for a particular infraction, under present School Board policy?

A. Yes. The principal would not be required to have the permission of the parents.

Q. In your opinion, your personal opinion, would you consider it good educational practice?

A. You are asking me in terms of my personal judgment, and not the policies covering this?

Q. Yes.

A. I would think a principal would want [19] to consider a request of a parent, and he would then have to judge, himself, whether he is going to accede to that or not.

Q. But there are other alternatives to corporally punishing a child, other than corporal punishment?

A. Yes.

Q. What do those include?

A. These could be conferences with a student; it might be having the parent in, or suspending or expelling the student.

Here, again, there is a wide range of practices which the administrator might consider.

Q. Is there any requirement imposed on the principal to employ any of those alternative punitive measures, or remedial measures, prior to giving a decision to corporally punish a child?

A. The policy says a principal should consider other means and generally indicates corporal punishment should not be one of the first things tried.

It is a general statement and, here again, he would have to judge this with the specific circumstances with which he is faced.

[20] Q. Would you say a principal would be in violation of this policy if he did not employ any of the means of behavioral control, prior to deciding to administer corporal punishment?

Mr. FEINBERG. Page 24:

A. General, or one specific case?

Q. I mean in every case.

My question is, if, in any individual case, the principal, hypothetically, would utilize corporal punishment as a means of punishing a child before administering or utilizing any of the alternative methods of behavioral control, would that be in violation of School Board policy?

A. Not necessarily.

Mr. HOWARD. Your Honor, I think I should object to this. He was asking Dr. Whigham to try to interpret the policy, and the policy, of course, is in writing and can speak for itself.

The COURT. Overruled.

Q. It is conceivable that corporal punishment is an appropriate means of discipline in an instance, despite the fact that no other means of control or remediation has been employed?

A. I think my answer to the question [21] would be yes. I would want to qualify it a bit, but it is yes.

Q. You are entitled to qualify it.

A. I don't mean by that that the principal can walk up and just start paddling.

He would have to look at the specific circumstances he is faced with; but I don't think he would have to show he exhausted every other means.

He would have to judge this in a specific situation.

Mr. FEINBERG. Page 25:

Q. The question was whether he would have to employ any other means, which is a different question.

A. I think, from the time the principal is faced with a situation, he is considering alternatives in his mind. I don't think this rules out corporal punishment.

Q. In spite of the fact that he actually has not employed any other means of remediation?

A. Yes.

* * * * *

[22–45]

[46] Mr. FEINBERG. I will call Dr. Whigham. Thereupon:

EDWARD L. WHIGHAM was called as a witness by the Plaintiffs, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. FEINBERG:

Q. Dr. Whigham, in an effort to shorten your testimony, I will just review with you—we have already read in your credentials and who you are and where you were employed; save for the fact that now we are more than a year later after our last deposition. So you have been a school superintendent about five years now; is that correct?

A. That's right.

Q. Does the corporal punishment policy make a differentiation between the use of physical force or first restraint and then corporal punishment as a means of punishment?

A. No. It does——

Mr. HOWARD. Excuse me, Your Honor. [47] The policy is in evidence and it is going to say what it says, and I object to questions to Dr. Whigham asking him to try to interpret it.

Mr. FEINBERG. If Your Honor please, in response to that, the latest revision, the revision that Dr. Whigham was questioned about at the time of the deposition, made it very clear that there was a differentiation between physical restraint and corporal punishment, because they had it under two different headings. The latest revision seems to combine them.

I don't believe the policy has changed and I want to establish there is a difference.

The COURT. All right, sir. Overruled. You can answer it, Doctor.

The WITNESS. The policy attempts to make a differentiation between physical restraint, in certain circumstances, and corporal punishment as such.

By Mr. FEINBERG:

Q. So when we speak of corporal punishment, particularly under the latest provision, we speak of paddling; is that correct?

A. Yes.

Q. Under the regulations and the policies, [48] which I will treat as one, for the purpose of our questioning here, may a student be paddled if he is currently under the care of a psychiatrist?

Mr. HOWARD. Your Honor, this, again, is either in the policy and regulations or it is not.

Mr. FEINBERG. If Your Honor please, I think the interpretation of these policies is what this case is all about.

The COURT. Are you asking the witness to tell me what is written or are you asking about general policies in operation, or what is your question?

Mr. FEINBERG. I am trying to determine—and much of my deposition that I read in was an attempt to put flesh on the bone of these policies and to find out what is permissible, what is not permissible, so that the Court and everybody else has an understanding of what the corporal punishment policy is all about.

If, indeed—frankly, I have nothing to hide here—if it turns out that many things that are occurring in the schools are allowable, by these policies, or not specifically denied to people who paddle in the school system, maybe these policies [49] ought to be changed and maybe they ought to put it expressly in the policies.

The COURT. You are asking the witness to interpret the written policy?

Mr. FEINBERG. That is exactly right.

The COURT. All right. Now, what is the question?

Mr. FEINBERG. Not only that, Your Honor, every one of these questions that I am asking is derived from evidence which I intend to put on the witness stand.

In other words, they are not figments of my imagination. I haven't made these up.

The COURT. It seems to me if the policy says one adult must be present, other than the person administering the paddling, that you don't have to ask him if that is in the policy or not, do you?

Mr. FEINBERG. If Your Honor please, if you will remember the testimony, I didn't ask if that was in the policy. I know the Court can read what is in the policy.

The question that I have is whether that is a flexible policy or how flexible is it, and I think that is very relevant.

[50] The COURT. So you are asking for interpretations?

Mr. FEINBERG. Exactly.

The COURT. All right. What is the question now before us?

Mr. FEINBERG. The question is, may a student be paddled if he is currently under the care of a psychiatrist.

Now, the policy speaks as to a psychologist and a medical doctor. My question is, may the student be paddled if he is under the care of a psychiatrist.

The COURT. The objection is overruled.

You may answer.

The WITNESS. If the youngster is under the care of a psychiatrist, then this form is available to the principal. Then I expect him to find out why he is—I would expect that he would seek to find out why the youngster is under the care of a psychiatrist.

I would say, in general, the usual sort of problems that would lead a student to be under the care of a psychiatrist might be the kind of problems that would not lead the principal to use [51] paddling. He may not be—he would have to know the specific reasons.

By Mr. FEINBERG:

Q. What is a cumulative record?

A. A cumulative record is a record kept by the school which contains information about the student's educational progress and career, with certain background information.

It is kept from year to year.

Q. So it is a cumulative history, educational history, of the student in his progress throughout the schools; is that correct?

A. Yes.

Q. Is it not also true that it follows the student to the particular school that he happens to be attending at that time?

A. Yes; it would.

Q. Would it be available to the principal or other people in the school to examine at any time? Is that correct?

A. It would be available for him to examine.

Q. Does your interpretation of this corporal punishment policy require, prior to determination [52] that corporal punishment will be administered, that the principal examine the cumulative record of the student?

A. We do not have a regulation that requires him specifically to examine the cumulative record.

A student would be brought to the principal for corporal punishment probably by the teacher or someone else. The teacher is supposed to be familiar with the cumulative record of the school.

Q. Are you suggesting that in every, or even most cases, of corporal punishment, the teacher actually brings the student down and discusses the prior educational history of the student with the principal?

A. I am suggesting that the principal does not initiate the action; that the action is initiated from a teacher or some other staff member.

Q. That happens in some cases and in some cases the principal might initiate it; is that correct?

A. It might.

Q. In some cases another administrator might initiate it, or a counsellor or anybody who is [53] in authority at the school?

A. Right. Students are mostly under the direction of teachers while they are in school.

Q. There is no formal requirement to examine the cumulative record.

My question to you, sir, is, even if we assume that a student's psychological, psychiatric, or medical condition is in the cumulative record, if there is no formal requirement that the cumulative record be examined, how is the principal to know whether or not he should consult with the particular physicians that are involved before deciding to paddle?

A. Let me go back. You are making a statement which is not the same one that I made. You said there is no formal requirement.

I said there is no formal requirement that the principal examine the cumulative record. If the teacher recommends this and the teacher's response is, "I am familiar with the youngster's record," then, of course, he may act on that.

If he does not have this information, then he should seek it.

Q. There is no formal requirement that [54] principals seek it in every case, though, is there?

A. Let me state this as I intended the statement: What I am saying is, there is no written regulation which says the principal can never authorize or administer corporal punishment without prior exhaustive examination of the cumulative record.

This is how I understood your question.

Q. My last question to you was, assume that the medical history, including possible psychological or psychiatric history, was in the cumulative record—is there any requirement that such history be in the cumulative record?

A. We have certain requirements of health information that would be in the record. Medical history or psychiatric history, not necessarily.

Q. So it is quite possible and quite conceivable that a child could be under this form of treatment unbeknown to anybody in the school system?

A. It is conceivable that he might be, yes.

Q. If, as you testified on deposition, corporal punishment may be administered in a rest room or a bathroom, under certain circumstances, and [55] in front of other students, what does the phrase in Paragraph 4 of the new revision of the regulations mean, "that corporal punishment is to be administered under conditions not calculated to hold the student up to ridicule and shame"?

Mr. HOWARD. Your Honor, I think that is a very drastic impression of his testimony before on his opinions about permissible places for corporal punishment.

The COURT. I interpret the question to be the following: "What meaning do you attach to the following sentence?" Is that what you are asking him?

Mr. FEINBERG. That is correct; but I have asked it in the form of a hypothetical, because I think that the testimony was quite clear—that is why those questions were asked—that a child can be paddled in a bathroom; he can be paddled in front of other people.

The question simply is, taking those into consideration, what does that provision mean; that he shouldn't be held up to ridicule or shame?

The COURT. You can answer the question, [56] sir.

The WITNESS. To not hold the student up to ridicule or shame means that we don't want—by this action of corporal punishment, we do not want that the student be ridiculed or be made ashamed before his peers and before others.

By Mr. FEINBERG:

Q. I'm sorry; I can't hear you, Dr. Whigham. Not made what?

A. If you want me to define "ridicule" or "shame"——

Q. I'm asking you, what understanding do you attach to that if children can be paddled in front of other children and children can be paddled in a bathroom? What meaning do you attach to not holding a child up to ridicule or shame?

Mr. HOWARD. Your Honor, that is an improper distortion of what he said. He said, in his deposition testimony that it would not necessarily be improper to paddle a child, under some circumstances, in a rest room, and so on, but he, himself, had reservations about it.

I think this question attempts to slant the whole thing the other way.

[57] The COURT. Overruled.

The WITNESS. In reference to your question about paddling in the bathroom, I have forgotten my exact wording in response to that, but——

By Mr. FEINBERG:

Q. Dr. Whigham, I am really interested—the Judge has rephrased my question. I am really interested, in your own words and not in the words of the policy, what does it mean—if you can give an example of what would be ridicule and shame, perhaps that will help.

What does that mean, that a child should not be held up to ridicule and shame?

A. But you have tied your questions to some other practices of punishment; in the bathroom and so forth.

Q. Those practices, to be ridicule and shame.

A. My response to your question, I believe, in the deposition was that I would not rule out, under certain circumstances. The meaning of that response was that I would not rule out or say a principal could never paddle a youngster or punish a youngster in a rest room.

[58] We have 237 schools in Dade County. At certain times, under certain conditions, the office or some other place might not be appropriate and a rest room might be the best available place for a principal or a teacher, whoever was authorized, to administer the corporal punishment.

I think, for example, if you want to take one that I would find very questionable, I could not, offhand, see why a principal would be doing it, is if he decided to administer the corporal punishment in the main entrance to the building, for example, an action which would be, it seems to me—unless he can offer a very acceptable reason of why he was doing it—would seem to me to make this a public occasion and this would come within the concept of subjecting this youngster to shame and ridicule.

Q. Does the corporal punishment policy, as you understand it and as you interpret it, authorize physical education teachers to decide whether to corporally punish, without prior consultation with the principal, on a regular basis?

A. No, it would not authorize that.

Would you think that the corporal [59] punishment policy encompasses paddling for reasons such as gum-chewing, standing with one foot on top of another, not dressing out

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properly, not wearing tennis shoes or wearing dirty underwear?

Would you consider those appropriate grounds for corporally punishing a child?

A. I believe, if I recall the ones you listed, appropriate grounds for corporal punishment with the proper procedures and authorities.

Q. Even with the proper procedures?

A. This, again, would depend on the circumstances. You are asking me a series of hypothetical circumstances about practices, and I don't know what kind of situation this occurred in, how much of the defiance of the school people this may have constituted, and so forth.

In general, I would say no.

Q. Does the corporal punishment policy encompass paddling entire classes for the wrongs of a few?

I will give you a specific example: Let's say a child's money is stolen. Does the corporal punishment policy authorize, in your opinion, the paddling of the entire class because the person [60] who stole the money won't come forward?

A. No.

Q. Would you consider it appropriate to paddle students for the sole reason that they failed to learn their lessons up to the expectation of the teachers?

A. I think the answer to that is no.

Q. Perhaps part of the deposition covered this, but I would like to ask it more generally:

Would you consider paddling to be excessive or severe if it resulted in observable injury?

Mr. HOWARD. Your Honor, I——

Mr. FEINBERG. I think he can answer it. If he can't answer it, he can say he can't answer it.

Mr. HOWARD. It seems to me this entire line of questions about asking the superintendent of schools about what he personally thinks would be appropriate or inappropriate to paddle, in hypothetical questions, doesn't go to any relevant kind of proof in the Court that we are now trying in this Court.

Mr. FEINBERG. If Your Honor please, [61] in response to Mr. Howard's argument, every one of these corporal punishment policies has some statement in words or effect, that paddling should not be extreme or severe.

Indeed, the previous policy, which has since been amended, specifically states that the person who is administering the paddling must be cognizant of the fact that he might be held personally responsible for injuries which result in his paddling, and my question, I think, goes to an interpretation of those provisions.

The COURT. All right, sir. Overruled. You can answer it, Doctor.

The WITNESS. Could I have the question back, please?

Mr. FEINBERG. Mr. Reporter, please——

The COURT. You know what you want to ask him; just ask him again, Mr. Feinberg.

By Mr. FEINBERG:

Q. Does the corporal punishment policy, as you interpret it, authorize paddling so as to cause observable injury?

A. No; but I would want to say here, of course, when it says punishment shall not be extreme, [62] severe, or whatever the specific words are that are used there, in an administrative policy and regulations, this would require interpretation.

Q. That is what I am asking you, sir.

A. As you describe the situation, my answer would be as I have indicated.

Q. "No"?

A. It would be no; but I am saying this is a matter of interpretation here.

Q. I am not sure I understand you.

Is there some phrase or word that you didn't understand? "Observable injury", I think, is clear.

A. I am saying it is a matter of the interpretation of the words.

Give me your question again.

Q. Would the corporal punishment policy be violated if a paddling resulted in observable injury?

A. What do you mean by "observable injury"?

Q. Injury that can be seen.

A. There might be some—in other words, it is possible that, in certain circumstances, such [63] as a sensitive youngster's skin or something, that it might produce a situation that the principal might not know would be produced there.

You are saying "observable injury", and I am saying, in general, the answer to your question would be no under those circumstances.

Q. You are qualifying your answer? You are saying if the principal didn't know about a special condition, perhaps, that the student had, and it resulted in observable injury, then that—am I not right—that you are saying that might not be a violation of the corporal punishment policy?

A. No. What I am saying is that when you administer corporal punishment you may get a reaction not anticipated, to the skin of the body.

The COURT. The difficulty with the question is the word "injury". Sometimes when you paddle a kid, his buttock looks red when he gets home and the next day it is okay.

Is that an observable injury?

Mr. FEINBERG. All right; I accept that, Your Honor.

The COURT. Is something a little bit black and blue an injury, as an example, if it goes [64] away in one day? This is the difficulty in answering your question.

By Mr. FEINBERG:

Q. Would you think that the corporal punishment policy, as you would interpret it, authorizes or allows for giving extra licks, let's say, to the student, if he cries out when he is hit or moves the chair that he is leaning on?

Would you say that is encompassed within the policy? Would you say that would be questionable practice?

A. I think that would be questionable practice as I understand you to describe it.

Of course, the present policy which the School Board has in effect, gives the maximum number of licks, to use your phrase.

Q. You already answered this indirectly, I think, the next question I have.

Would you consider the paddling of tardy students to school, outside of the main entrance of the building, prior to allowing them to enter the school, to be a violation of the ridicule and shame provision of the paddling policy?

A. Paddling a student for being tardy, [65] in the full view of others, I would say is not consistent with the policy.

Q. Is it not true that the corporal punishment policy provides that a determination must be made whether or not paddling will change the behavior of the student? Isn't that a part of the policy?

If you want, I can read it to you.

A. Yes; why don't you read it to me.

Q. I am now reading from the latest revision, and I would state to the Court that this provision has been virtually unchanged:

> Corporal punishment is generally applied to the body of the offender or is physical punishment as opposed to other forms of punishment, and is administered as a means of changing the behavior of students.
>
> It is, therefore, important to analyze whether or not this goal will be accomplished by such action.

Do you remember that in the policy?

A. Yes.

Q. My question to you, sir, is, taking that particular requirement into consideration, would [66] you consider it a questionable practice to paddle a student three or four times within a two-week period?

A. In general, yes, I think it would.

It is not inconceivable to me that it might be done, but in general I would think that would be a questionable practice.

In some cases, it may be that administrative judgment is that this sort of repeated corporal punishment might have some hope of changing the behavior of that student.

On the other hand, the question can also be raised as to whether the repetition of the corporal punishment was, in fact, accomplishing anything in that case.

Q. Do you subscribe to the theory that paddling should continue in the schools because—and now I am quoting, sir, from the May 22, 1969 report, entitled, "Reaction of Junior High School Principals and Faculties to Prohibit Corporal Punishment at These Levels".

Would you subscribe to this statement which is a quote——

Mr. HOWARD. Excuse me. Are you going [67] to introduce that?

Mr. FEINBERG. No; I am going to question him about it.

By Mr. FEINBERG:

Q. "At times unadulterated fear must be induced to provide some behavior controls. This, of course, is not the theoretical ideal, but at times it is absolutely essential, if any reasonable school climate for learning is to be maintained."

Do you think that is a good reason; "unadulterated fear"?

A. I would not use the phrase and would not agree with the term "unadulterated fear".

Q. Yet, in this compilation, which I will show you, it was cited in support of continuing the policy.

A. I would have to study their report. It has been some time since I have seen it, and I think this might be the quotation of a particular individual's statement, not representative of the general administrative view, or certainly not an official viewpoint.

Mr. HOWARD. I am not sure he was able to finish his answer.

[68] Mr. FEINBERG. I'm sorry.

Mr. HOWARD. You didn't let him answer as to the complete statement.

The COURT. Finish your answer.

Mr. FEINBERG. Your Honor, I'm sorry; I didn't hear you.

The COURT. I said, let the witness finish his answer.

The WITNESS. I would not use the term "unadulterated fear" that is used in that particular person's statement, whoever it may be. It is unidentified there.

I think corporal punishment is viewed by many school personnel, administrative people, and instructional people, as a technique that may be used for control of—social control, in a school situation. But to use the phraseology or terminology, "unadulterated fear", I would not agree with.

By Mr. FEINBERG:

Q. You have familiarity with this report; is that correct?

A. It is a report of some several years ago, and I don't readily recall the details and the circumstances of it.

[69] Q. But you remember the report was prepared; is that correct?

A. Yes; and I can't even recall why and under what circumstances it was prepared.

Q. Do you recall whether or not any attempt was made to find out who made that statement and to question the principal who made that statement?

A. I don't recall, at the time, whether any attempt was made to find that particular person and question him about his terminology that he used there.

Q. If I had a principal on the witness stand now who made that statement, would you be kind enough to question

him about the use of corporal punishment in his school, if he came out and said, "I use corporal punishment to create unadulterated fear in my school, and it is necessary, to maintain discipline in my school"?

A. If I had knowledge that the principal was making that, I would want to know something about the circumstances and so forth, that I would want someone to raise a question with him about what he means by that.

[70] Q. Getting back to the interpretation of the policy and the regulations, as you interpret the policy, is there any requirement that a person who is dispassionate and unfamiliar, personally unfamiliar, with the events to the paddling, make the decision to paddle?

Is there any such requirement?

A. My answer to that would be yes. It is not in the terminology of the words you are saying; you say "dispassionate", and I have forgotten the other words you used.

Q. What I am really getting at—and I will ask it in a different way—isn't it true that this policy authorizes a principal who has, himself, observed the alleged wrongdoing, to administer the paddling and decide it should be administered?

A. It could, under some circumstances, yes.

Q. You say, "under some circumstances"?

A. The ones you have just specified in your question; he is the one that observed the misbehavior and, therefore, he decided to act.

Q. There is no restriction on a principal deciding and administering the paddling when the [71] principal has, himself, decided that he has seen the person or the child doing something wrong? There is no requirement he consult with somebody else, is there?

A. No, there is not a requirement that he consult with someone else.

Q. You mentioned before that the number of licks allowed has been limited according to whether you are elementary school, junior high school or high school?

A. In the current policy; that is correct.

Q. What provision is there, or what way is there, either in the policy or that you know of, to insure that those limits are adhered to?

A. It is a provision of the policy that the principal is to keep a log on the cases of corporal punishment.

Q. How do you have any insurance that the log is going to be maintained accurately? Is there any way of assuring that?

A. Yes; by the administrative staff under whom that school works, which would look at that log.

[72] Q. If the principal didn't write down a paddling that took place, there would be no way of knowing such paddling took place?

A. That's right; if he wanted to falsify the records, then he could do so.

Q. Indeed, there is no real way of knowing that any of these requirements are adhered to; any of these regulations, the ten or so?

A. I would have to say my answer to that would be no.

Q. Isn't it true that there is no formal requirement and it is not the practice to inform the student population of these regulations?

A. No. I think the answer to that is no.

Q. What requirement is there?

A. The requirement to interpret to the staff and students what the rules and regulations of the school are.

Q. Where is this written?

A. It is written in—I think implied or written, in a number of places in our policies.

Q. Are you suggesting it is the policy of the school system to inform the students, "When you are paddled, you will receive only so many licks; [73] and a determination must be made by a principal; you are not allowed to be paddled by anybody other than the principal"?

A. I think the principal would need to interpret those policies and regulations to his staff and to his student body.

Q. I'm not asking you about the staff, sir; I'm asking if you have personal knowledge of the fact that students are informed of these policies.

A. I could not have personal knowledge of what goes on in 237 schools.

Q. You can't point out any regulation which said that these particular policies—corporal punishment policies and

regulations be posted in the school any place, or be distributed to the students?

A. No; we do not have regulations requiring them to be posted.

Q. Isn't it a fact—and I would be happy to show you the policy and regulations for the purpose of this question—that the only objective or subjective, or combined objective and subjective, determination to be made by the principal before he decides to paddle a student, is whether or not it will change his behavior?

[74] A. Repeat that question again.

Q. Isn't it a fact that the only requirement contained in these policies relating to the determination of whether a paddling should take place, is the determination by the principal of whether or not the paddling will change the student's behavior, and that is considered an important requirement?

The word "important" is written in.

A. I think the answer to what you are saying is yes, as I understand your question.

Q. Notwithstanding your statement, which I read into the record, that it is possible that paddling might cause severe psychological harm, which is your testimony; do you still consider the principal is qualified to make that determination?

A. Yes, I would think so.

Q. Do you consider the principal is fallible?

A. I consider all human beings are fallible.

Mr. FEINBERG. No further questions.

CROSS-EXAMINATION

By Mr. HOWARD:

Q. Dr. Whigham, in the portions of the [75] deposition that were read, and the questions that were asked by Mr. Feinberg, there was very slight reference to your background and educational employment, and I would like to amplify that a little bit.

You have been superintendent of schools for five years now in Dade County?

A. I will have to count them up myself. I came in 1968. Going on five years, Mr. Howard. Soon, before too long, it will be the end of the fifth year.

Q. Could you briefly tell the Court your educational background?

A. You mean collegiate preparation?

Q. Yes; your collegiate and graduate work and degrees which you hold.

Mr. FEINBERG. For the record, I would like to object to this examination, because I think it goes into, perhaps, the question of qualifying Dr. Whigham for testimony that Mr. Howard would want to submit in defense of this suit.

The COURT. No. You have asked him for many opinions and this goes to the Court weighing it, deciding what weight should be given to the opinions. It is proper questioning.

[76] The WITNESS. My Bachelor's Degree from Emory University of Georgia; Bachelor's Degree from the University of Georgia; Doctorate from New York University, Doctorate and Ph. D. Bachelor and undergraduate degree in political science.

By Mr. HOWARD:

Q. Would you briefly detail your employment experience, then, as an educator?

A. I was initially, in education, a teacher. Then, following that, assistant principal, a principal; then I was an assistant superintendent of schools for a number of years and then was superintendent of schools in Oak Ridge, Tennessee prior to coming to Miami, where I came as a deputy superintendent of schools and then became superintendent.

Q. Was corporal punishment, or the authorization for the use of corporal punishment, a generally prevalent technique of pupil control in the various school systems in which you have been employed as a teacher or as an administrator?

A. I am hesitating on your words, "generally prevalent".

Q. I am not asking you about the prevalence of its actual use.

[77] A. You are not asking about its use?

Q. Was it authorized in the various schools?

A. By policies, yes. In the school systems, I believe, in which I have worked, it was permissible, by policy, to administer corporal punishment.

Q. You gave the figure of 237 schools in the Dade County Public School System?

A. Yes.

Q. What is the student population now in the Dade County Public School System?

A. The student population, at this time, is somewhere between 240,000 and 243,000 students. That is elementary and secondary schools. It does not include adult programs and so forth.

Q. What is the total personnel population in the school system, of both teachers and administrators?

A. You mean teachers and administrators?

Q. Yes.

A. Because there are other employees.

Q. Leaving aside non-instructional, maintenance, carpenters, and such.

[73] A. The figure is somewhere around 12,000.

Q. What is the size of the Dade County School System as compared to other systems throughout the country?

A. Size, in terms of student enrollment—which I assume you are referring to—would make us the sixth largest school system in the United States.

Q. Would you explain to the Court, in general terms, your duties and responsibilities as superintendent of the school system? What different problem areas do you oversee in the superintendent's job?

A. I hope some of them aren't always problems.

The superintendent of schools in the Dade County system has a number of duties that are assigned to him by law, statutory.

Mr. FEINBERG. Your Honor, for the sake of brevity, I would stipulate that Dr. Whigham is the chief administrator, officer, of schools, and I think the Court can take judicial notice of the fact that he exercises executive duties in accordance with his powers in his job.

To go into every detail of what [79] his position is, I think is a waste of the Court's time.

Mr. HOWARD. I am not going to go into tremendous detail, Your Honor, but I think the scope of his responsibility goes, not only to his qualifications, but it also serves to put this issue of corporal punishment somewhat in perspective, from the standpoint of the operation of a school system of this size.

The COURT. All right, sir. Overruled.

By Mr. HOWARD:

Q. You may continue.

A. In general terms, a superintendent would be responsible for assisting the Board in the formulation and issuing of basic

policies and regulations for the operation of the school system, in making basic resource allocations for general oversight of the administration of the school system.

There are areas of operation which are administered from the county level; personnel service in the school system; the physical plant systems in the school system; the financial services, the transportation system, food service, and so forth, in our [80] school system is divided into six geographical areas and we have an area superintendent under whom the various school units operate, and the responsibility of the superintendent is the overall supervision and coordination of those services.

Q. Then your duties go considerably beyond just the overseeing of curriculum formation and the presentation of curriculum studies in the school, I gather?

A. Yes. The development of educational programs, instructional policies and regulations, basic program structures, of course, is one of the functions.

We have a department under—at the county level and, of course, that is also a responsibility area at the school level, but it includes the other functions, financial—the total operation of the school system.

Q. What is the current annual budget of the school system, Dr. Whigham?

A. If you include the current expenditure for capital purposes our annual budget would be $275,000.

[81] Actually, the budget, by the time the fiscal year is over, we will get close to $300,000. It is because you amend in certain portions of the budget. So $275,000 to $300,000 would be the budget.

The budget increases during the year, during various contracts, and appropriations are amended into the budget.

Q. From the standpoint of the pupil in the school system, your responsibilities at the top of the administrative heap include curriculum—general overseeing of curriculum?

A. Yes; in the educational programs, curriculum, if you like to use that term.

Q. The provision of the physical plant, the school's equipment?

A. Yes.

Q. The provision of personnel, teaching personnel, and administrators in the schools?

A. Yes.

Q. Purchasing?

A. Purchasing, yes, is one of the functions that is under our general administration.

Q. Transportation?

[82] A. Yes; transportation.

Q. Bussing is the word we use so much these days.

A. I don't think of those two terms as being synonymous, but yes.

Q. The provision of health and food requirements; lunches, clinical care?

A. Food service, yes.

The health services we provide, Mr. Howard, are health services provided through the County Health Department in the schools. It is a cooperative arrangement.

Q. In this total picture, I want you to discuss now the question of pupil discipline and purposes and needs for discipline among the pupil population of the schools.

Why is it necessary, in the first place? What purpose does discipline in the school serve?

Mr. FEINBERG. If Your Honor please, I really think this is way outside of direct testimony in this case. I limited my testimony to paddling and corporal punishment.

The COURT. What difference does it make, as a practical matter? You have one judge, no [83] jury, and it may well be that he is exceeding the direct and it might be that the witness may not have to stay here all week, or come back. I don't know.

Mr. HOWARD. That is one purpose I am trying to serve, to not have to do this in two or three pieces.

The COURT. You can ask the question. Maybe the biggest objection would be that if you are exceeding cross, then you should not lead or cross examine, but rather ask direct questions.

Mr. FEINBERG. I really have no objection to these questions in the abstract.

The COURT. Treat him as your witness when you go beyond cross.

Mr. HOWARD. All right, sir.

By Mr. HOWARD:

Q. Do you remember the question, Doctor?

A. Yes; discipline in the school: For the purpose of establishing what we call a climate—we use that term—that is conducive to learning and for the control of the behavior of students and students in groups at the schools, so that the purposes of the school can proceed.

Is part of this the example or teaching [84] to students about the existence of external standards or rules? Is that part of the discipline picture?

Mr. FEINBERG. Your Honor, I am going to object. That is a leading question and I don't think it is appropriate. If there was ever a leading question, that is it.

The COURT. Sustained.

By Mr. HOWARD:

Q. Dr. Whigham, assuming the need for an orderly climate for learning and order in the schools, which I think you mentioned, what different methods are available within the school system now for maintaining order and discipline and good behavior in the schools?

A. Let me get at some basic things which I think are very relevant here and are a part of it. As a matter of fact, I think some of our publications indicate it, or certainly our statements do, that the first, most basic thing, in terms of creating order in the school and behavior of students, is an adequate instructional program; placing a student in one of those programs which is suited to his needs.

The quality of teaching in the classroom [85] and the quality of instruction is a very important aspect of controlled student behavior.

In terms of the kind of practices or provisions that schools have made in controlling the behavior of students—we are talking in the broad dimension here—we have tried to emphasize the providing of students with a right to participate in the life of a school.

Q. How is that done?

A. In any number of ways; in student government, through participation of student activities. Secondary schools have been asked, for example, to set up specific committees that get at some of the current problems and concerns in the schools, and to have students' participation on those.

There are other kinds of ways of working with students, groups of students or individual students, where there is a

problem, such as conferences with them, conferences with their parents, having the assistance of some of the specialists where we have them on the staff, visiting teachers, psychologists, or referral to another agency, again, where that is available.

It is a matter of having conferences [86] with the principal or assistant principal.

The assistance of the guidance people is a part of this, although we don't see them as being responsible, per se, for discipline; the whole of the guidance, all of these are part of controlling the behavior of students at school.

There is also a School Board policy which permits the suspension and expulsion of students, if that is determined advisable.

Q. Do the PTA's and parent groups enter into this picture, also, in terms of methods of controlling student behavior?

Mr. FEINBERG. Excuse me; I didn't get your question.

The COURT. Does the PTA busy itself helping control discipline in the schools?

The WITNESS. Well——

Mr. FEINBERG. If that is the question, I have no objection.

The WITNESS. I think that works formally and informally. Some of our policies prescribe that parents shall be involved.

For instance, the school dress, parents shall be involved in the deliberation of [87] this.

Some of our other practices require that there be parental involvement. In addition to such formal means as that, I am sure it feeds back to the school officials, the teachers and principal and so forth, informally from parents, who are certainly a part of this.

By Mr. HOWARD:

Q. Are curriculum adjustments made, from time to time, with particular students, to attempt to help with behavior problems? Is this a standard technique?

A. Yes. This is to be looked at as whether this youngster is properly placed in the instruction program from the standpoint of both the particular instruction experience being offered him in the class or curriculum to which he is assigned, plus the possibility of shifting this youngster to a program which more nearly meets his interests and needs and to the extent that we have resources to do it, yes.

The answer to your question is yes.

Q. I think you mentioned, in your direct testimony, that one of your responsibilities is to formulate and propose policies and regulations to [88] the School Board for adoption?

A. Yes; or to be the person who heads up this process.

Q. You oversee the process of the formulation of the policies?

A. Yes.

Q. Are there various policies enforced, bearing on student behavior and discipline within the schools?

A. There are, and from time to time we have issued publications that summarize—not summarize, but list those, and indicate the reference to them, or as far as the administrative staff, each member of the administrative staff, each principal, each head of a department or office of each school have a copy of Board policies and regulations; but we have issued publications.

Q. Can you enumerate some of the policies, and if you have material that you want to refer to to help you, you can do so; the policies which have to do with student behavior and student discipline?

A. Policies relating to control of student behavior on buses; policies in reference to field trips; policies in reference to dress; policies in [89] reference to the relationship between law enforcement officials and the school and the student while he is at school.

Policies requiring that certain kinds of committees be set up in schools and certain steps be taken toward the control of conduct at school.

Policies on suspension and expulsion. Policies on corporal punishment.

Policies of this type.

Q. The policy, then, and regulation, on corporal punishment is one of these various techniques or written policies which are available to the school staffs?

A. Yes.

Q. With reference to the policy and regulations on corporal punishment, is this reviewed and revised, from time to time? Has it been so developed?

A. There is no requirement—I think my answer to your question is yes, but I would like to respond to it.

There is no requirement that they be, at a specified interval, reviewed. Because of the concern of school behavior and conduct of students, in recent years it has been revised numerous times.

[90] Q. Is this true of other policies and regulations relating to student behavior and control?

A. It would be true of all policies and regulations.

Q. Dr. Whigham, you were asked a number of questions about your opinions on corporal punishment, and I want to ask you just a few more.

How do you see the role of corporal punishment in the school system today? What is its place? What is its proper function, as you see it, for the availability of corporal punishment as a technique?

A. Well, I think there are strong differences of opinion, even among professional educators, about the use of corporal punishment.

It is a technique which is available to staff members, under the Florida law and under the School Board policies and regulations.

Staff members feel it is a useful technique under certain circumstances.

I am not sure I am being responsive to what your question is.

Q. Do you, or does anyone else, as far as you know, within the educational circle, recommend it [91] as the prime and only technique for controlling student behavior?

Mr. FEINBERG. Your Honor, I object to the very generalized nature of that question. He says, "does anybody", and that is pretty general.

The COURT. You can answer that question. Overruled.

The WITNESS. Well, I was going to say, Mr. Howard, I can't say what everybody—which is what your question implies—in education may think about this.

It is not my general impression that educators generally would find the use of corporal punishment as you indicated. As a matter of fact, quite the opposite; that they would not find acceptable the indiscriminate use of corporal punishment.

I would use the term, "indiscriminate" to describe—to be the same as the adjectives that you just used to describe it.

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By Mr. HOWARD:

Q. What are the relative advantages and disadvantages, or the considerations, to be taken into account by school administrators, as between the [92] administration of corporal punishment and suspension or expulsion of a student? What factors are involved in that decision?

A. I think the administrator, in deciding whether he was going to use one or the other—here, again, we have a hypothetical question, and I always want to give the responses—it depends on the specific circumstances; but I think, in the first place, he would need to determine first the other means are not useful or have not succeeded, the other means available to him to have control or to secure proper behavior, desirable behavior, as he would find it in that situation, from the student.

With reference to the two that you specified there, suspension or expulsion versus corporal punishment; suspension or expulsion would terminate either temporarily or for a longer period of time, the education of the youngster, and he needs to weigh that step, which is a very serious step, against whether the corporal punishment would, in fact, bring some improvement in the situation; whether it is a useful procedure or technique with this particular youngster and that particular situation.

If he concludes that it is not and [93] the other means are available, then he might want to turn to suspension and expulsion.

Am I responding to your question here?

Q. Corporal punishment leaves the student in school, right, as opposed to suspension or expulsion?

A. That is the idea behind it, yes.

Q. Assuming that corporal punishment is to be used in a given instance, is it desirable that the punishment be given as quickly as possible after the offense?

A. Yes; as a general principle we have found that is desirable.

Q. What are the reasons against a delayed period of any significance between the misconduct and the administration of corporal punishment?

A. Primarily to keep——

Mr. FEINBERG. If Your Honor please, I am going to object to this question. I think it calls for an answer from an expert psychologist, and I don't think the doctor is qualified as such to answer this question, particularly since the policy talks about anxiety, which is a psychological term.

The COURT. We don't expect him to [94] testify in the area of psychology, but I think he can answer the question. Overruled.

The WITNESS. To keep the youngster from building up undue concern in his mind about the impending punishment; to keep from coping with this over a long period of time; the idea is to go ahead with the punishment, as in the terms indicated in the policy.

By Mr. HOWARD:

Q. In your opinion, would it be desirable or functional to post a detailed list of infractions for which corporal punishment could be administered, with a list of how many licks for each?

As an educator, how does that idea sound?

A. You are asking me for my judgment, and my answer to that would be no.

Q. Why not?

A. The problems of posting a detailed list in that—trying to get a list that is exclusive, that becomes exclusive in terms of human behavior and behavior of students at school, I would not favor the particular list and posting a list.

I think it tends to remove—certainly [95] is a factor in removing any judgmental aspects. I think the judgment does need to react to the situation.

Q. Would it be desirable or functional to require a formal or stylized hearing procedure in every instance, before the administration of corporal punishment?

A. We have not felt it was desirable to require that; assuming you are referring to some sort of administrative hearing.

Q. Some sort of procedural steps similar to what we now provide for suspension hearings, for example.

A. I think this would require more time; would require more personnel to be involved and so forth, that it would lengthen the time, for instance, if it was determined that punishment was to be administered, it would lengthen the time before the punishment was administered.

Q. You are referring back to the student's concern, then, or worry, which you mentioned before?

A. I would consider that would not be desirable to prolong that period of time.

Q. Following that, then, obviously the [96] way the policy and regulations now require the principal to make the decision for administration of corporal punishment involves some delay, as opposed to the teacher administering the punishment.

Summarily, in view of your last answer, what is the desirability of having the principal pass on making these decisions in each case?

A. The law provides, if I recall, I assume the thinking behind that provision was not to give——

Mr. FEINBERG. Your Honor, I object to assuming the thinking.

The COURT. Sustained.

By Mr. HOWARD:

Q. What is your opinion, your judgment, on the desirability of having the principal be the one who decides on corporal punishment?

A. There is one person in the school that is passing judgment on the total practices of the school, and also so that that decision is not made solely by a teacher in the school; but the teacher, in order to have corporal punishment administered, would have to consult with the principal, would have to have the judgment of the principal himself involved.

[97] Q. Mr. Feinberg asked you some questions intended to suggest that there was no way that the policy and regulations on corporal punishment can be enforced, so to speak, within the schools.

Is it not a fact that the policy requires the presence of an adult witness when corporal punishment is to be administered?

A. The policy specifies that, yes.

Q. It does require that a log be kept of each corporal punishment?

A. The present policy does specify that, yes.

Q. If the principal, or any other member of the staff, violates these policies, would there be grounds for dismissal or for proceedings for dismissal?

Mr. FEINBERG. I object to the leading nature of that question.

I withdraw the objection.

The WITNESS. If any violation of the policy would require that, we consider that and take some action with reference to it. It might or might not lead to the particular action that you mentioned.

Mr. HOWARD. I have no further [98] questions.

REDIRECT EXAMINATION

By Mr. FEINBERG:

Q. When you testified to a number of alternative methods of dealing with disciplinary problems in school—you just testified to that?

A. Yes.

Q. Corporal punishment is merely one in the arsenal that is available to the school system dealing with disciplinary problems; is that right?

A. Yes.

Q. Isn't it true that the corporal punishment policy is generally considered a last-resort disciplinary measure?

Isn't that the terminology used in several of the editions of the corporal punishment policy?

A. That terminology is used. This term, as I would understand it, does not mean that every other means must, in every circumstance and with each individual case, be exhaustively used. It means that it is not to be considered the sole means of discipline in the school.

Q. Wait a second. You are saying, on [99] the one hand it doesn't mean that all other punishment be used. On the other hand, it doesn't mean it is the sole means.

Doesn't it mean that it shouldn't be considered the first? Isn't that the general meaning of it?

A. No, I would not say that. I would say no, in every circumstance it does not mean it cannot be.

Q. I didn't ask you in every circumstance. I said generally it suggests at least it shouldn't be the first. Isn't that a fair statement?

A. It depends on what you mean here. If you say it generally means where it cannot be, then the answer to your question is yes.

Q. Do you attach any significance to the fact that that particular phraseology—and I will quote it from the 8/5/70 revision, the second paragraph—"Corporal punishment may be used in the case where other means of seeking cooperation from the student has failed."

We find that particular phraseology in both the third and fourth revision. Quoting, now from the fourth revision, "Corporal punishment may [100] be used when other means of seeking cooperation from the student has failed."

We find that in the last revision that language, even in substance, has been deleted.

Is there any significance to the fact it has been deleted?

A. Yes; I think there is significance to the fact that it has been deleted. It was deleted because of the request of organizations, of staff members, particularly the classroom teachers association and others, who questioned whether the other terminology might not lead to an interpretation of what was not meant; precisely the point you are getting at today.

If I recall those discussions and debates at the time that that change was made, they particularly wanted to eliminate the "last-resort" phrase in the policy.

Q. Are you familiar with the National Educational Association?

A. Yes.

Q. Can you describe for us what the National Educational Association is?

A. The National Educational Association [101] is an organization of educators in this country now confined largely to the classroom teachers.

Q. Isn't it true that recently the National Educational Association came out with a long, detailed history called "Educational Psychological Report", condemning the use of corporal punishment in the schools and urging that it be phased out as quickly as possible?

A. I would not be able to respond to your question. I am not familiar with your report.

Q. Are you familiar with the report about which I speak?

A. No. I said I am not familiar with that report.

Q. Hopefully for the last time; getting to the question of who makes the determination as to who gets paddled, isn't it a fact that not only is it required by the School Board policy

that the principal be the one to make the decision, but the only mention of corporal punishment in state law—at least the only one that I can find—refers specifically to the fact that teachers should not paddle students without the prior consent of the principal?

Are you familiar with that? There [102] is a state statute spelling that out?

A. I can't quote it. I don't recall it.

Q. You suggested that violations—you stated, in fact, that violations—on cross-examination—that violations of School Board policy would result in administrative inquiry.

I think Mr. Howard asked you whether it would result in dismissal and you said it would at least result in some kind of inquiry; is that right?

A. It does not automatically lead to dismissal, but it would lead to an administrative inquiry.

Q. If violations of School Board policy are found to have been perpetrated by an administrator, then I assume some action may be taken; not necessarily dismissal, but some action?

A. Actions which are available to us by law or policy, yes.

Q. Do you know whether or not any action whatsoever was taken against those persons who paddled James Ingraham on October 6, 1970?

A. Yes. If I recall, and I don't recall the specifics—exact details may not be right there—[103]there was an inquiry or objection to that incident by the area office, I believe on two occasions.

Q. Do you know what the findings were of that area office?

A. No, I cannot give them to you; but I believe there was a reprimand, a letter of reprimand, placed in the file of the principal.

Q. Did Mr. Wells make the inquiry; do you know?

A. I can't say.

Q. Do you know if any administrative action was taken, as a result of the several paddlings which occurred in the month of September, late September and October 1970 to Roosevelt Andrews, the other plaintiff in this case?

A. I can't answer that precisely. I believe—I have forgotten whether the investigation—I don't know, Mr. Feinberg, whether it pertained to several cases or one case.

Q. You don't hold any kind of degree in psychology, do you?

A. No; I'm not a psychologist.

Q. You would agree—at least you did in your deposition—that there are certain circumstances, [104] certain psychological factors, that go into paddling students, aren't there?

If you want me to remind you of your testimony——

A. I want to explain psychological factors is a term used in one sense. Are you talking about an exact determination by a psychologist? That is another matter. But psychological factors, yes.

Mr. FEINBERG. That's all. No further questions.

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[105–107]

* * * * *

[108] AFTERNOON SESSION

[Thereupon, the trial was resumed and the following proceedings were had.]

The COURT. Who is next?

Mr. FEINBERG. I would like to call James Ingraham.

Thereupon:

JAMES INGRAHAM was called as a witness in his own behalf, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. FEINBERG:

Q. Please state your name.

A. James W. Ingraham.

Q. Where do you live?

A. 9221 Northwest 16th Avenue.

Q. How old are you?

A. Sixteen.

Q. Who do you live at that address with?

A. My parents; mother and father.

Q. Who else?

A. My brother and sister.

Q. How many brothers and sisters do you [109] have who live at that address?

A. Eight people.

Q. Including yourself?

A. Yes.

Q. Where did you first start going to elementary school?

A. Gladeview.

Q. Is that in Dade County?

A. Yes.

Q. Did you go to any other elementary schools in Dade County?

A. No; not that I can remember.

Q. What school did you go to after Gladeview?

A. I was in junior high; Madison Junior High.

Q. Let's talk about Gladeview for a minute: Did you ever receive a paddling at Gladeview Elementary School?

A. Yeah.

Q. Do you remember what grade that was in, about?

A. Which one are you talking about?

Q. Excuse me——

[110] A. Board or a paddle?

Q. I didn't understand. I am asking you if you were ever paddled at Gladeview Elementary School.

A. Yes.

Q. More than once?

A. Yes.

Q. Do you remember in what class you were paddled?

A. Yes.

Q. What grade?

A. I was in the fourth, going on the fifth.

Q. Do you remember who your teacher was?

A. Mr. Curry.

Q. Do you remember the reason why Mr. Curry paddled you?

A. To going to tell the time. If you don't tell the time—if you don't get the chance, then they will paddle you.

Q. What location in the school did he paddle you?

A. In the classroom.

Q. Were the other students present in the classroom when you were paddled?

[111] A. Yes.

Q. Were you the only one that he paddled because you couldn't tell the time?

A. No.

Q. How many others did he paddle for reasons such as that?

A. Lots of people.

Q. Lots of other children in the classroom?

A. Yes.

Q. You specifically remember that?

A. Yes.

Q. Do you remember if Mr. Curry paddled students for any other reason other than not being able to learn?

A. Yes; they get their name written down on the board for talking.

Q. He paddled for talking?

A. Yes.

Q. Did you ever get paddled by Mr. Curry for talking?

A. Yeah.

Q. Did he ever take you to the principal's office?

[112] A. No.

Q. Where did he have the paddle?

A. In his room.

Q. Do you remember where it was? Can you picture the room and where the paddle was?

A. By the desk, on the blackboard.

Q. Where would he paddle the children in the room? Any specific place in the room?

A. Up by his desk. Sit down and turn this way and they face that way.

Q. Did he call the children up to the front of the room? Is that what you are saying?

A. Yeah, or else stand up.

Q. Did the paddle hurt; do you remember that?

A. Yeah.

Q. Did you cry?

A. No.

Q. Excuse me?

A. I held it in.

Q. Do you remember if any of the other children cried, in Gladeview?

A. Yeah.

Q. Do you remember any other paddling in [113] Gladeview Elementary School that you received or that you saw?

A. Yeah.

Q. What?

A. My PE teacher.

Q. By the PE teacher in Gladeview?

A. Yeah.

Q. Are you certain it was in Gladeview?

A. Yeah.

Q. Tell me about that. Why did the PE teacher paddle you?

A. I got paddled—it was my job to bring in the balls and I forgot to bring them in, so I got paddled for that.

Like if you fight out there, you get paddled, or don't get in line and playing around in line, you get paddled.

Q. Were you paddled for all those reasons?

A. I just got paddled for leaving out the balls.

Q. For not doing your job?

A. Yeah.

Q. Did you see other people paddled for those other reasons?

[114] A. Yeah.

Q. Do you remember his name?

A. Mr. Lawrence and Mr. Stewart.

Q. Two PE teachers.

Do you remember what grade that was in?

A. Sixth, fifth and fourth.

Q. Where did they get the paddles from?

A. I don't know.

Q. Can you picture where they obtained the paddles when they paddled you?

A. You mean out there? They have them on their desk.

Q. The PE teachers had their paddles on the desk?

A. Yes.

Q. Do you recall whether or not Mr. Lawrence and Mr. Stewart ever consulted with the principal before paddling anybody?

A. No.

Q. Did he ever take you to the principal before he paddled you?

A. No.

Q. Did you ever see them remove any of the other students from the PE room or the PE field [115] and take them away to the principal?

A. Some of them, sometimes. Like if they keep fighting all the time.

Q. You specifically remember, when you were paddled, he didn't go to the principal's office?

A. No. No, sir.

Q. This was both Mr. Lawrence and Mr. Stewart?

A. Mr. Lawrence and Mr. Stewart.

Q. Do you remember any other paddlings you received in the fourth, fifth or sixth grade, or that you observed?

A. I see Mr. Curry beat a teacher—I mean, beat students.

Q. Who?

A. Mr. Curry.

Q. You already told us about Mr. Curry. You mean in addition to what you have told us?

A. Uh-huh.

Q. Tell me about that.

A. Like you passing by the room you see him beating students.

Q. In other words, you would pass his room and look in; is that what you are saying?

[116] A. Yeah.

Q. Do you have any other recollection of paddlings in Gladeview?

A. I got hit by a book.

Q. Who was holding the book when you were hit by it?

A. The principal.

Q. Where did he hit you?

A. On my butt.

Q. Do you remember the reason for that?

A. No.

Q. You say you went to Madison Junior High School; is that right?

A. Yeah.

Q. What grade did you start Madison at?

A. Seventh.

Q. Did you ever receive any paddlings at Madison?

A. Yes.

Q. Do you recall specifically any paddlings?

A. Being late.

Q. For being late to class?

A. Yeah.

[117] Q. Where would you get paddled at Madison?

A. In the assistant principal's office.

Q. Who would do the paddling?

A. All of them. The man named Mr. ——

Q. Tell me what position they held in the school, if you know. Were they principals, teachers, assistant principals?

A. All of them was assistant principals.

Q. How many were there?

A. Three.

Q. Were you paddled by all of them?

A. No; only by one.

Q. Do you remember his name?

A. Mr. Albert.

Q. Mr. Abbott or Albert?

A. Albert.

Q. Were you paddled by him more than once?

A. Yeah.

Q. Do you remember how many times?

A. Not exactly.

Q. Can you give us an estimate?

A. About three or four times.

Q. Were they all for being late?

[118] A. Naw; about two for late—two or three. Yeah, about three. Naw; two for late, one for fighting and one for getting accused for a stolen bike.

Q. Let me ask you this: You say you were paddled in somebody's office; is that right?

A. Yeah.

Q. Whose office was it?

A. Mr. Albert's.

Q. Do you remember—think back—do you remember any of these paddlings specifically and who was present when you were being paddled?

A. Just Mr. Albert.

Q. On every one of these occasions, only Mr. Albert was there?

A. No; when the lady was there whose son or boy had stole his bike, she was the only one present then when I got paddled.

Q. Tell me about that. You say you stole a bike?

A. No. Alvin stole it, a friend of mine.

Q. How did you wind up getting paddled?

A. Somebody saw me and him on it, so we were called—they called us into the office the next [119] day and we got a paddling for it.

Mr. Albert said she could have pressed charges against us, but she didn't. She wanted us to get punished, so we got a paddle.

Q. You say this was in the seventh grade?

A. Yeah.

Q. That was the 1969–70 school year; is that correct?

A. I don't remember.

Q. I want to go over it again.

You specifically remember this paddling for the stolen bike?

A. Yes, sir.

Q. I want you to think carefully and tell me exactly who was present in the assistant principal's office.

A. Mr. Albert, a lady and her son and Alvin and me.

Q. No other adults were there?

A. No.

Q. Was the principal there?

A. No.

Q. Were you taken to the principal before you got a paddling?

[120] A. No.

Q. Do you remember how many licks you received?

A. About five.

Q. Did they hurt?

A. Yeah.

Q. Was Alvin paddled?

A. Yes.

Q. Do you remember how many licks he received?

A. About ten.

Q. Did he cry?

A. Yes.

Q. Did you cry?

A. A little bit.

Q. Do you remember any other times that you were paddled by Mr. Albert? You said you were paddled about four times.

Do you remember any other times, specifically?

A. I told you for being late.

Q. Do you remember being paddled for being late, specifically?

A. Yes.

[121] Q. Can you picture the time you were being paddled?

A. Yes.

Q. Who was in the room then?

A. Just Mr. Albert and some more children who got paddled for being late.

Q. So you were all paddled for being late?

A. Yeah.

Q. Were any other adults in the room at the time?

A. No.

Q. Were you taken into the principal's office before you were paddled?

A. No, sir.

Q. Was the principal present?

A. No.

Q. Are you sure of that?

A. Yes.

Q. Do you remember being paddled on any other occasion by Mr. Albert?

A. Getting in a fight.

Q. Do you remember that paddling?

A. Yeah.

Q. Where were you paddled?

[122] A. In his office.

Q. Who was present?

A. Mr. Albert.

Q. Who else?

A. Another boy, who I had the fight with.

Q. Were you both paddled?

A. Yes.

Q. Do you remember how many licks you got that time?

A. About four apiece.

Q. Did it hurt.

A. Yeah.

Q. Were any other adults present, at that time?

A. No.

Q. Did Mr. Albert see you fighting?

A. No.

Q. How did he know you were fighting; do you know?

A. Somebody must have went to the office and told.

Q. Do you remember any other times you were paddled by anybody at Madison? Was Mr. Albert the only man that paddled you?

[123] A. That paddled me.

Q. Did you see anybody else being paddled by anybody else?

A. Yes.

Q. Who?

A. By a man named—I forget his name.

Q. Who was he?

A. He was an assistant principal.

Mr. HOWARD. Your Honor, excuse me. Unless we have some proof about whether there was authority or no authority, it seems to me that just his seeing other people paddled doesn't prove anything here.

If they are going to get into everything——

The COURT. Does this have to do with the policy of corporal punishment?

Mr. FEINBERG. No. The purpose of this testimony will be the purpose of much other testimony to show these regulations are not followed; they are ignored.

The COURT. Merely the fact that someone else—he saw someone else get a spanking, you are showing he was not in the principal's office?

[124] Mr. FEINBERG. I don't know what he was going to say. I don't think I'm putting words in his mouth.

For example, if he saw somebody paddled on the PE field, I think that would be evidence that there was.

The COURT. So you propose to follow up with other questions along that line?

Mr. FEINBERG. Yes.

The COURT. All right, sir.

By Mr. FEINBERG:

Q. My questions to you was, you said you saw somebody else paddled; is that right?

A. Yeah.

Q. Who was the person that was doing the paddling? You say you can't remember his name?

A. He was tall and dark. He was colored. He had a black Cadillac.

Q. That isn't my question.

Who was he in the school; was he a teacher?

A. Assistant principal.

Q. Do you remember where the paddling took place?

[125] A. In his office.

Q. How come you saw it?

A. All three of them, Mr. Albert's office here, another assistant's office here, and another one right here, and these doors be open.

When you come in the office, you are sitting right down looking in his door.

Q. That's when you saw this paddling.

Did you see more than one?

A. Yes. I see lots of them.

Q. You have seen lots of people paddled in there; is that right?

A. Yeah.

Q. Did you see anybody cry as a result of these paddlings?

A. He paddled a girl.

Q. You saw the girl being paddled?

A. Yes.

Q. Did they cry?

A. Yes.

Q. Do you remember how they were standing when they were being paddled?

A. Straight.

Q. What did he use to paddle them with?

[126] A. A board.

Q. Commonly referred to as a paddle, in the school system?

A. Yeah.

Q. How long did you stay at Madison?

A. For a whole year.

Q. Have you told me about all the paddlings you either received or observed at Madison? Can you think of any others?

A. No.

Q. Where did you go from Madison?

A. I went to Madison from the beginning of the school year.

Q. Where did you go from Madison? What was the next school you went to? That was in the seventh grade, right?

A. Yeah.

Q. Where did you go to the eighth grade?

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A. Madison.
Q. You went to Madison in the eighth grade?
A. Yes. Yeah; I think so.
Q. When did you go to Drew? What grade were you in at Drew?
A. Eight.
[127] Q. Were you at Drew for the whole time during the eighth grade?
A. No.
Q. You started at Madison; is that it?
A. Yes, and then I went to Drew.
Q. You were only at Madison for a few days, though; isn't that right?
A. Yeah.
Q. So for the most of the ninth grade, you were at Drew; is that right?
A. Yes.
K. Did you stay at Drew through the whole ninth grade?
A. That was the eighth.
Q. The whole eighth grade, did you stay at Drew?
A. No. For about—I don't know how long.
Q. Where did you go after Drew?
A. To Horace Mann.
Q. Did you finish the eighth grade there?
A. Yes.
Q. Did you go through the ninth grade?
A. Yes; Miami Central.
Q. Let's talk about Drew. You were in [128] Drew for a half of the eighth grade or so, or more?
A. About a half. Maybe a little bit more.
Q. Who was the principal at Drew when you were there?
A. Mr. Wright.
Q. The man you see in the audience?
A. Yeah.
Q. Can you point the man out?
A. Mr. Wright, right there.
Mr. FEINBERG. Let the record reflect that Mr. Wright is being pointed out. He is sitting next to his attorney, Mr. Spicer.
By Mr. FEINBERG:
Q. Do you remember who the assistant principal was at Drew?

A. Mr. Deliford.
Q. Do you see him in the audience?
A. Yes.
Q. Can you point to him?
A. In the corner, right there.
Mr. FEINBERG. Let the record reflect that Mr. Deliford has been identified by the witness.
[129] By Mr. FEINBERG:
Q. Do you know if there were any other assistant principals at Drew?
A. Yes; Mr. Barnes.
Q. Do you see him in the audience?
A. Yes.
Q. Can you point him out?
A. Right by Mr. Deliford?
Mr. FEINBERG. Let the record reflect that Mr. Barnes has been identified by the witness.
By Mr. FEINBERG:
Q. Do you know if there were any other assistant principals or assistants to the principal, at Drew?
A. I'm not sure—but I don't know his name—but I think that man with the glasses.
Q. The man with the glasses. Okay.
You don't know his name; is that right?
A. No.
Q. Did you experience any paddlings at Drew?
A. Yes.
Q. Do you know how many?
A. Two.
[130] Q. Do you know by whom?
A. Yes.
Q. Who?
A. By the PE teacher and Mr. Wright.
Q. Who paddled you first; the PE teacher or Mr. Wright?
A. The PE teacher.
Q. Who is the PE teacher?
A. Mr. Wright and Mr. Kemp.
Q. They were the two PE teachers?
A. Yes.
Q. Mr. Wright that you have identified as the PE teacher, he is not the same Mr. Wright who is the principal; is that correct?

A. No.
Q. He's another Mr. Wright?
A. Yes.
Q. Were you paddled more than once by either Mr. Kemp or Mr. Wright, the PE teacher?
A. Just once.
Q. Can you remember that incident?
A. Yes.
Q. Was anybody else paddled, at that time, besides you?
[131] A. Yes; the whole class.
Q. Do you remember the reason?
A. Everybody was talking.
Q. Who did the paddling?
A. Both of them; Mr. Wright and Mr. Kemp.
Q. Tell me how they did it.
A. Lined the whole class up in two rows.
Q. They lined the class up in two rows?
A. Yes.
Q. Did they divide the class in half?
A. Yeah.
Q. What did they tell the class to do then?
A. Step up, one by one, and take a lick.
Q. Step up one by one and take a lick?
A. Yes. See, you have two lines. Mr. Wright one here, and Mr. Kemp over here, and everybody come up one by one and got a lick.
Mr. Wright put on his gloves.
Q. Mr. Wright put on his glove?
A. Yes.
Q. What kind of glove is this?
A. A leather type glove. One of them leather ones.
[132] Q. Why did he do that?
A. So it wouldn't shake. So his hand wouldn't sting when he hit you with the board.
Q. Did both Mr. Kemp and Mr. Wright participate in this paddling?
A. Yes.
Q. They each had a paddle?
A. Yeah.
Q. Do you know where they obtained the paddles?
A. They was in the office.

Q. In whose office?
A. They office; Mr. Wright's and Mr. Kemp's office.
Q. Had you ever seen these paddles before or since?
A. I seen them once. Yes, once in a while in the office on the desk.
Q. Have you ever seen anybody else paddled by Mr. Wright, the PE teacher, or Mr. Kemp?
A. Did I see——
Q. Anybody, besides this one occasion when the whole class was paddled.
A. Yes, I see people get paddled by Mr. [133] Wright before.
Q. Do you remember on how many occasions Mr. Wright paddled? The PE teacher, I am talking about.
A. Lots of times. About, at least, almost three people a week.
Q. Do you remember why he paddled people; the reason?
A. Yes; for late, talking, eating in the class, cursing.
Q. Anything else?
A. Or coming, you know, like upstairs, just caught saying names around all the white teachers upstairs, you get a paddling for that, or for fighting.
Q. Mr. Wright, the PE teacher, would paddle for all of these reasons, and you saw people paddled for all of these reasons?
A. Yes.
Mr. HOWARD. Your Honor, I think he is leading his witness.
Mr. FEINBERG. I think he testified to that.
The COURT. If he did, you are [134] repeating the testimony.
By Mr. FEINBERG:
Q. Let me ask you this: When the whole class was paddled by Mr. Wright and Mr. Kemp, do you know whether Mr. Wright or Mr. Kemp consulted with the principal before paddling the class?
A. They didn't.
Q. How do you know that?
A. Because they—the first time they told us to shut up and everybody kept talking, so they come out and told everybody to line up.
Q. Do you know whether, on any of these occasions, they consulted with the principal?
A. Not that I know of.
Q. How do you know that they didn't?

A. Because they—half the time, all they do, like if you say nigger or something, they will get you and paddle you and tell you you're going to change or either in the class they take your foot and paddle.

So they don't have time to tell the principal.

Q. Did you ever see the principal or any of the assistant principals when they were paddling [135] the students in the PE class?

A. No.

Q. You mentioned you were paddled another time by Mr. Wright, the principal; is that correct?

A. Yeah.

Q. Do you want to tell me about that?

A. Well——

Q. When did that happen; do you remember?

A. Well, in October.

Q. October of what year?

A. I don't remember what year. It was two years ago.

Q. 1970?

A. Yeah.

Q. Who paddled you; Mr. Wright?

A. Yeah.

Q. Where did he paddle you?

A. In his office.

Q. In the principal's office?

A. Yeah.

Q. Was anybody else paddled at that time?

A. Yeah.

Q. Who?

A. Some more students.

[136] Q. How many other students?

A. About eight to ten. About that many.

Q. Where had you just come from before you got to the principal's office?

A. We come from out of the auditorium.

Q. Who got you out of the auditorium?

A. Mr. Wright.

Q. The principal?

A. Yeah; he took us to his office.

Q. He took you to his office?

A. Yes.

Q. What happened? Who was the first one paddled?

A. I don't know their names.

Q. You weren't the first one paddled?

A. No; I was the last.

Q. Did you see the others paddled?

A. Yes.

Q. Were there girls and boys?

A. Yeah.

Q. They were all paddled?

A. Yes.

Q. Did any of them cry?

A. Yeah.

[137] Q. How come you were the last?

A. Because I wasn't going to get no paddle.

Q. What do you mean? I didn't understand that.

A. I didn't do nothing to get nothing for.

Q. Did you tell Mr. Wright that?

A. Yeah.

Q. What did you say to him?

A. I said I didn't do nothing but went up on the stage by accident and I ain't going to get no paddling.

Q. Did he tell you that he was going to paddle you?

A. I don't remember what he said. I don't remember exactly what he said, but he said, "You wait right here."

Q. Why did you say you were not going to take a paddling?

A. Because I didn't do nothing.

Q. How did you know you were going to be paddled?

A. Because he said so.

Q. He said he was going to paddle you?

A. Yes; he was going to paddle everybody.

[138] Q. When you saw these other students paddled, who else was in the office besides you, the students and Mr. Wright?

A. Nobody.

Q. Was Mr. Deliford in the office?

A. No.

Q. Was any other teacher in the office?

A. No.

Q. Was Mrs. Miranda in the office?

A. No.

Q. Who is Mrs. Miranda?

A. The lady back there.
Q. Who was she, at that time?
A. Who was she?
Q. Yes.
A. Science teacher. Naw, not science; black history, or something like that teacher. She was a teacher.
Q. She was the teacher?
A. Yes.
Q. Was she your teacher that day?
A. Yeah.
Q. But she wasn't in the room when you were paddled; when the other students were paddled?
[139] A. No.
Q. Who was in the room when you were paddled?
A. Mr. Wright, Mr. Barnes and Mr. Deliford.
Q. What happened to the other children?
A. They went back into the room.
Q. They were sent out of the principal's office?
A. Yeah.
Q. Did you resist the paddling?
A. Yes.
Q. Do you remember if he told you how many times he was going to beat you?
A. Started off with five, and then he went up to twenty.
Q. Did he eventually paddle you?
A. Yes.
Q. Did you physically resist it?
A. Yes.
Q. How did he paddle you, if you resisted it?
A. They took off their coats when they come in.
[140] Q. Who were "they"?
A. Mr. Deliford, Mr. Barnes and Mr. Wright.
Q. They took off their coats?
A. Yes, and their watches.
Q. Then what did they do?
A. Told me to take the stuff off my pockets and take off my coat.
Q. Take the things out of your pockets?
A. Yes; my back pockets.
Q. What kind of coat were you wearing?
A. A blue jean jacket.
Q. They told you to take that off?

A. Yes.
Q. Then what did they tell you to do?
A. "Stoop over and get your licks."
Q. Show me how they showed you to do that.
A. Over there?
Q. Yes.
A. Told me to get like this, and then I wouldn't take no——
Q. Did you do that when they told you to do it?
A. No.
Q. What did you do?
[141] A. I stand up.
Q. Then what happened?
A. Then they grabbed me; took me across the table.
Q. Who were "they"?
A. Mr. Deliford, Mr. Barnes and Mr. Wright.
Mr. FEINBERG. Let the record reflect that the witness was directed to lean over the table on his hands, on the table, and he has shown us how he was directed to do that.
By Mr. FEINBERG:
Q. You say Mr. Barnes and Mr. Deliford did what?
A. Put me across the table.
Q. Show me how they did that.
A. Like this here; across this way.
Q. Is that exactly how you were? Show us exactly how you were.
A. Across the table, like this.
Q. Did they put you on the table like this?
A. Yes.
Mr. FEINBERG. Let the record reflect the witness is lying prone, face down, across the [142] table, with his feet off the floor.
By Mr. FEINBERG:
Q. Who held you there?
A. Mr. Barnes and Mr. Deliford.
Q. Who held what?
A. Mr. Barnes held my legs and Mr. Deliford held my arms.
Q. Who paddled you?
A. Mr. Wright.
Q. You said he was going to give you how many licks?
A. Twenty.
Q. How many did he give you?

A. More than twenty.
Q. How do you know that?
A. Because I was counting them.
Q. You counted each and every one?
A. Just about.
Q. You are sure he gave you that many?
A. I know he gave me more than twenty, because if he gave me twenty—there was more than twenty, I know; I was counting. For every time I'd count one, it was at least two.
Q. Did it hurt?
[143] A. Yes, it hurt.
Q. Did you cry?
A. Yeah.
Q. How old were you at the time?
A. Thirteen or fourteen. I was fourteen.
Q. What happened after he finished paddling you? What did he say to you, if anything?
A. He told me to go wait.
Q. Did Mr. Wright say anything to you after you were paddled?
A. To put on my clothes.
Q. Mr. Wright told you to put on your clothes?
A. Yes.
Q. Where were your clothes?
A. My coat was on—I forget where it was, but my pick was on the ground.
Q. When you say your "pick", that is a comb for your hair?
A. Yes.
Q. Did you have a wallet?
A. No.
Q. He said, "Put on your clothes." Then what did he say to you?
[144] A. "Wait outside of the office."
Q. Did you wait where he wanted you to wait?
A. Wait by the secretary's desk; outside of his office by the secretary's desk.
Q. Did you have to open the door to get out there?
A. He opened the door and told me if I move—I said I was going home—he said if I move he was going to bust me on the side of my head.

Q. Did you see what Mr. Barnes and Mr. Deliford did after they finished?
A. They were putting back on their watches and their coat. Then they closed the door and then I left.
Q. Then you left?
A. Yes.
Q. Where did you go?
A. Home.
Q. Was it at the end of the school day?
A. No; it was during the school.
Q. Why did you go home?
A. To tell my mama what happened, but she wasn't home.
[145] Q. Do you remember about what time of day that was?
A. About——
Q. In the morning or afternoon?
A. In the afternoon.
Q. You say your mother wasn't home. Was anybody home when you got home?
A. My sister, and I told—I didn't tell her nothing. I just went upstairs to the bathroom.
Q. What did you do in the bathroom?
A. To look to see how bad I was hit.
Q. What did you see? Where did they hit you?
A. Across my butt; hit me on my arm, and across my eye.
Q. Was there any evidence of the hit across your arm, any physical evidence? Could you see anything?
A. Swollen.
Q. What about across your eye?
A. They weren't no mark there. It was just hurt.
Q. What about your buttocks; could you see that?
[146] A. Yes.
Q. How did you look at that?
A. On our mirror. We got a big mirror, and I turned my back against it and looked.
Q. What did you see?
A. Black and purple and it was tight and hot.
Q. Did your mother eventually come home?
A. Yes.
Q. Did you tell her about it?
A. First I was scared to tell her, but then I told her.

Q. Why were you afraid to tell her?
A. Kind of ashamed to show her.
Q. But you did show her?
A. Yes.
Q. How did she react?
A. She start screaming and hollering.
Q. Did she say anything?
A. She said, "What happened to my child?"
Q. I didn't hear that.
A. She talking about, "Oh, what happened to my child?"
Q. Then what happened?
[147] A. She took me to the doctor and started screaming and hollering.
Q. Excuse me?
A. She took me to the doctor.
Q. What was the last thing?
A. She started screaming and hollering.
Q. Your mother?
A. Yes.
Q. You say your mother was hysterical?
A. Yes.
Q. Which doctor did you go to?
A. Jackson.
Q. How did you get there?
A. My daddy, I think—naw. I don't know.
Q. Were you examined at Jackson by a physician?
A. Yes.
Q. Were you given any medication?
A. Yes. First I—at first he told me I had a fever. He thought I had drunk some coffee.
Q. You say, "at first". What did he do, take your temperature?
A. Yes, and I had a fever.
Q. What else did he do to you besides take [148] your temperature. Did he examine your buttocks?
A. Yes. He said my mama should go and arrest the man that did it.
Q. Just answer the questions that I am asking you. Aside from that, what did he do? I'm not asking you what he said.
A. Just examined me and give some medicine.
Q. What kind of medicine did he give you?
A. Pain and——

Q. Pills?
A. Yes.
Q. Go on. What else?
A. And the kind that make you—like a laxative; and sleeping pills.
Q. Do you recall if he told your mother to treat you, in any way?
A. Yes; put cold compresses and give me those pills.
Q. The next day, did you go back to school?
A. No.
Q. Did the doctor tell you anything about going back to school?
A. Told me to stay out at least a week.
[149] Q. Did you, in fact, stay out of school?
A. Yes.
Q. What did you do when you stayed out of school?
A. I had to go—my mommy took me to another doctor.
Q. I'm not up to that. Where did you stay when you stayed out of school?
A. Home.
Q. What did you do at home?
A. Laid down in bed.
Q. Did you lay on your back?
A. On my stomach.
Q. Why?
A. Because my butt hurt if I laid on my back.
Q. Could you sit down?
A. No.
Q. How long was it before you could sit down?
A. Going on the third week.
Q. Before you could sit comfortably?
A. Yes.
Q. You mentioned that you went to another [150] doctor.
A. Yes.
Q. Where was that?
A. Family Health Clinic. Family Health Center.
Q. That's not the same place you went to the first time?
A. No.
Q. Do you recall whether you received any treatment there?
A. Yes. The doctor examined me again and told me I had to stay home for another few days and give my mommy

something. I don't remember. Told me to keep putting cold compresses to it.

Q. Did you mother put cold compresses on it?

A. Yes; every night.

Q. Did you play while you were out of school that time?

A. No.

Q. Did you tell anybody about it? Did anybody find out about it; any of your friends?

A. No.

Q. How about your brothers and sisters; [151] did they know about it?

A. Yeah.

Q. What did they say about it?

A. Called me "rain bummy".

Q. Was that in reference to your buttocks?

A. Yeah.

Q. Were they making fun of you?

A. Yeah.

Q. How did you feel about that?

A. I plugged them in their face.

Q. You were angry about that?

A. Yes.

Q. How long did that go on?

A. Still going on now.

Q. Did you see any other doctors? Did you go to any other hospital, besides the two you have told us about?

A. That's all I remember.

Q. Excuse me?

A. That's all I remember going to; those two.

Q. Do you remember approximately how long you were out of school, or exactly how long you were [152] out of school?

A. At least a week and a few days.

Q. Let me ask you this, now: Did you ever see anybody in the school walking around with a paddle?

A. Yes.

Q. Who?

A. Mr. Barnes and another man, three of them.

Q. You saw three people walking around with a paddle?

A. Yes.

Q. Do you remember the names of the other two, besides Mr. Barnes?

A. No.

Q. Was it anybody here in the courtroom?

A. No. Mr. Barnes.

Q. Where did you see Mr. Barnes with the paddle?

A. Upstairs.

Q. Where, upstairs?

A. In the big open area room.

Q. What do they call that room?

A. The loft.

[153] Q. Do they hold classes in the loft area?

A. Yes.

Q. You say you saw Mr. Barnes there. What were you doing when you saw Mr. Barnes with a paddle?

A. In my class.

Q. How often did you see him with a paddle?

A. Just about every day.

Q. Where would he be going?

A. Just walking around.

Q. Would he be walking into the classrooms?

A. The class would be open and he would be walking through them.

Q. You mean one class here, one class here?

A. Yeah.

Q. Were they separated by walls?

A. Just removable walls, but most of them they would be open.

Q. You say Mr. Barnes was walking through each class?

A. Yes.

Q. How often did you say you saw him?

[154] A. Just about every day.

Q. Did he eventually stop carrying the paddle around, if you remember?

A. Not that I can remember.

Q. Did you ever see him paddle anybody as he was walking through?

A. You mean in the open area of the loft?

Q. Yes.

A. No.

Q. What about the other people you saw carrying the paddles around; did they carry it in the same place or another place?

You say you saw three people carrying them?

A. Another man would be carrying it downstairs and then there would be another one outside by the cafeteria.

Q. The cafeteria was outside?

A. The cafeteria inside, but outside where you wait at before your teacher picks you up.

Q. When you say "outside", you mean outside of the school building?

A. Yes.

Q. You mean out in the open?

[155] A. Yes.

Q. This was after you finished eating you are supposed to congregate at a certain place?

A. Yeah.

Q. You saw this man, whose name you don't know, carrying a paddle out in that area?

A. Yeah.

Q. Did you ever see him paddle anybody out there?

A. No.

Q. How often did you see him carry the paddle around out there?

A. Just about every day.

Q. Let me ask you this: This paddling that you received from Mr. Wright, the principal, did the injuries that you received from them eventually clear up?

A. What you mean?

Q. In other words, are you fully recovered from the injuries?

A. Do I have any pains?

Q. Yes.

A. No.

Q. How long after the paddling did you [156] have pain?

A. You mean after it don't go, how long?

Q. How long after the paddling; for what period of time?

A. Oh; about three weeks.

Q. After the three weeks, you had no more pain; is that right?

A. Yes.

Q. You have no lingering effects of that paddling; is that right?

A. Yes.

Mr. FEINBERG. No further questions.

CROSS-EXAMINATION

By Mr. HOWARD:

Q. James, how tall are you?

A. I don't know.

Q. You are not quite six feet, are you?

A. I don't know.

Q. How much do you weigh; do you know that?

A. Two hundred pounds.

Q. About how much did you weigh back when you were at Drew?

A. One hundred and twenty.

[157] Q. One hundred twenty?

A. Yes. Oh, about thirteen, I weighed about one hundred twelve. I remember I used to quit losing that twenty pounds.

Q. You have gained eighty pounds in two years?

A. That's what it looked like.

Q. Going back to Gladeview Elementary, you said you had been paddled some time in elementary school?

A. Yeah.

Q. You went to see the counsellors, didn't you, as early as that, back when you were in elementary school?

A. I went to see the counsellor.

Q. Do you remember talking to the counsellors about your conduct and about how you were supposed to behave in school, and that sort of thing?

A. You mean did we have counsellors and I talked to them?

Q. Did you talk to either your teachers or the principal or separate counsellors about your behavior and how you were supposed to act in school?

A. Nope.

[158] Q. Are you sure about that?

A. Yeah.

Q. Do you remember that you were suspended once back in Gladeview, for five days? Do you remember that?

A. For what?

Q. According to the school's notice, because you didn't behave in the classroom; you did not show any respect for a substitute teacher; continued the practice, even after several counselling sessions.

Do you remember that now?

A. Yeah.

Q. Five days' suspension?
A. Yeah.
Q. Do you remember, again in Gladeview, you were suspended for two days because you brought a knife to school?
A. I don't remember that. Two days for a knife?
Q. Yes; bringing a knife to school.
A. Oh, yeah.
Q. You were suspended two days then?
A. Yeah.
[159] Q. Did the principal talk to you about that? Did you talk to a counsellor?
A. Not as I remember talking to a counsellor.
Q. About the way you were acting in school?
A. No.
Q. When you went into Drew, in the eighth grade, do you remember talking to a counsellor then whose name is Hart, either Mr. or Mrs. Hart, about the rules of the school and how you were supposed to behave in school?
A. Yeah.
Q. Do you remember that?
A. Yes.
Q. Do you remember, just after you had started at Drew, that Mr. Barnes had a talk with you because you had been running in the hall without a pass, and you were chewing gum and using bad language in the hall?
Do you remember that?
A. No.
Q. You don't remember talking to Mr. Barnes about that kind of conduct?
[160] A. About chewing gum?
Q. About chewing gum and using profanity and being disrespectful.
A. Being in the hall without a pass. Not no disrespectful.
Q. Do you remember Mr. Barnes calling you down for it, though?
A. Yeah.
Q. You do remember at least about chewing gum, but you don't remember the other part of it, do you?
A. Right.
Q. Don't you remember kind of using some bad language at Mr. Barnes when he stopped you?
A. Nope.

Q. You didn't say something like, "You better not put your damn hands on me"? Did you say something like that to him?
A. No.
Q. About the same time—now, this is before Mr. Wright paddled you I'm talking about—just after you had entered Drew, do you remember another time when Mr. Deliford had a talk with you about making noise in the hall; making a disturbance in the [161] hall?
A. Nope.
Q. You don't remember having any talk with Mr. Deliford?
A. About making noise in the hall?
Q. Yes; about your behavior.
A. Making noise in the hall?
Q. Do you remember having a talk with Mr. Deliford about anything? Let me ask you that. Before you were paddled by Mr. Wright.
A. No.
Q. Do you remember your teacher talking to you, from time to time, about your conduct, about the way you were acting, both at Gladeview and then at Madison and then at Drew?
A. My teacher?
Q. Teachers or the people in the principal's office.
A. From Gladeview on up to Drew, do I remember any of them talking to me?
Q. Yes.
Mr. FEINBERG. Your Honor, I don't object to this kind of questioning, but I think this question in particular is too general. Does he [162] remember teachers talking to him. It is not calculated to elicit a responsive answer.
The COURT. He doesn't like your question, Mr. Howard. Do you want to ask a different one?
Mr. FEINBERG. If he wants to name specific incidents, I have no objection.

By Mr. HOWARD:

Q. Isn't it a fact that from time to time you had some trouble in Gladeview? You were suspended; do you remember?
A. Yeah.

Q. You had some trouble as you went along. Isn't it a fact that your teacher or your counsellors or somebody from the principal's office would talk to you about your conduct?

A. Yes.

Q. They would try to point out what was wrong and how they wanted you to behave in school?

A. Yes.

Q. You said that your PE teacher, Mr. Wright, at Drew, and another PE teacher had paddled the class in two lines?

A. Yeah.

[163] Q. You were in one of those two lines?

A. Yeah.

Q. You only got one lick that time, didn't you?

A. Yeah.

Q. Was that what happened to the rest of the boys, too?

A. Yeah.

Q. One lick each?

A. Yeah.

Q. Were you particularly ashamed and embarrassed with everybody in the whole class getting one lick?

A. No; because everybody got a lick.

Q. When Mr. Wright paddled you in his office, isn't it a fact that you and Broderick Jones, he had brought the two of you together to his office from the auditorium or from the loft?

A. No.

Q. Wasn't Broderick Jones the other boy on the stage with you that wasn't supposed to be there?

A. I don't know. I don't remember his name.

Q. You don't know his name?

[164] A. No.

Q. There were three boys on the stage, weren't there, at the time Mr. Wright came in and called you down?

A. Yeah—I don't know how many people. Yeah, about three.

Q. One of the boys Mrs. Miranda had told to be there to run the machine, correct?

A. Yeah.

Q. You were not supposed to be there?

A. Right.

Q. The other boy that went with you to the office was not supposed——

Mr. FEINBERG. Your Honor, I think I am going to object to the leading questions. I think he can elicit this testimony without putting words in the witness' mouth.

The COURT. Overruled. This is cross-examination.

By Mr. HOWARD:

Q. Aside from the boy who was supposed to run the machine, you and the other boy that went to the office were not supposed to be on the stage, were you?

[165] A. Right.

Q. Mr. Wright came in and called you down from the stage?

A. He didn't call me down from the stage.

Q. How did you get down to go with him to the office?

A. Miss Miranda told me to come off the stage.

Q. You didn't go down when she told you?

A. I was on my way down when he come in. He saw me coming down off the stage.

Q. Didn't she tell you three times to leave the stage and you wouldn't go?

A. She wasn't talking just to me; she was talking to all of them to get off the stage. While she was saying that, I was on my way off the stage.

Q. She said it three times?

A. I don't know how many times she said it.

Q. Mr. Wright was there while she was talking to you all, wasn't he?

A. Yes, he had just come in.

Q. You used some pretty bad language to Mr. Wright as you were going back to the office with him, didn't you?

[166] A. No.

Q. Did you say anything while you were going back with him to the office?

A. No.

Q. I want you to remember, now.

A. I'm thinking. There wouldn't be no need for me to curse at him, if I did.

Q. Weren't you hollering and complaining that you didn't want to take any paddling?

A. No, I wasn't hollering. I just said, "I ain't going to get no paddling."

Q. How did you say it to him?

A. "I ain't getting no paddling because I didn't do nothing."

Q. Is that the way you said it?

A. Yeah.

Q. Did you use some pretty bad language?

A. No.

Q. You didn't use words like "mother fucker"——

A. No.

Q. ——at any time that day, to Mr. Wright?

A. No.

Q. You say he started, he began with five [167] licks to you and then you said he went on up to something like twenty?

A. Yes.

Q. If he began with five, why did he go beyond five?

A. He said, "The longer you take, the more it going to be."

Q. He said what?

A. "The longer you take, the more it going to be," so I just sat there and let it go, because I ain't going to get no licks for nothing.

Q. Didn't he say that he was going to give you licks beyond five because you were using bad language?

A. No.

Q. Tell me again why did he give you more than five licks?

A. Because he said——

Mr. FEINBERG. Your Honor, I think he has answered that question already. I think it is repetitious.

Mr. HOWARD. I didn't hear exactly what he said, or I didn't understand.

Mr. FEINBERG. I heard him, and I am [168] sitting back there.

The COURT. I heard him, too.

The WITNESS. "The longer you wait the more it going to be."

By Mr. HOWARD:

Q. "The longer you wait"?

A. "The more it going to be."

Q. What did he mean; you were supposed to leave? If you stayed there he was going to give you more licks?

Mr. FEINBERG. Counsel is arguing with the witness. I think it is clear what the answer is. I understand the answer. I think Mr. Howard does.

Mr. HOWARD. I will withdraw it. Everybody understands it but me, but I don't think it is that important.

By Mr. HOWARD:

Q. You weren't trying to say a while back that Mr. Wright deliberately hit you on the arm?

A. No, he wasn't deliberate.

Q. You were jerking around on the table and one of the licks hit you on the arm?

A. Yeah.

Q. When you said you saw Mr. Barnes [169] walking through the loft, Drew is what they call an open school, isn't it, James? Do you know about that?

A. Yes.

Q. Doesn't that mean that instead of being in little classrooms, separate classrooms, that everybody is pretty much in the open, with different groups studying in this one big area?

A. Yes.

Q. Is that the way it worked at Drew?

A. Yes.

Q. So whoever would walk around anywhere, you would be able to see him, right; whatever he was carrying?

A. Yeah.

Q. You didn't finish the eighth grade at Drew, right?

A. No.

Q. You went on to Horace Mann?

A. Yes.

Q. Did you pass at Horace Mann?

A. Yes.

Q. You went on, then, to——

A. Senior high school.

[170] Q. Are you in senior high school now?

A. Right now?

Q. Yes.

A. No.

Q. You are not in school now?

A. No.

Q. Why not?

A. Because I'm working.

Q. You are working?

A. Yeah; I'm at the Juvenile Building for threatening a teacher and I got sentenced to this program called day field, so I got to work.

You know, I got committed there at the Juvenile——

Mr. HOWARD. No further questions.

The COURT. You are excused.

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[171–253] * * * * *

[254] * * * * *

Thereupon:

ROOSEVELT ANDREWS was called as a witness in his own behalf, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. FEINBERG:

Q. State your name, please.

A. Roosevelt Andrews.

Q. Where do you live?

A. 2280 Northwest 50th Street.

Q. Who do you live there with?

A. Mother and father.

Q. Any brothers and sisters?

[255] A. Yes.

Q. How many?

A. Five sisters and two brothers.

Q. Where did you go to elementary school first?

A. Carver Ranches Elementary.

Q. Where is that?

A. West Hollywood.

Q. In Broward County?

A. Yes.

Q. Where did you go after that time?

A. North County.

Q. North County Elementary?

A. Yes.

Q. Where is that?

A. Carol City.

Q. In Dade County?

A. Yes.

Q. After that?

A. Bunche Park Elementary.

Q. After that?

A. North Dade Junior High.

Q. What grade were you in in North Dade Junior High School?

[256] A. Seven and a half and eight.

Q. After that?

A. Brownsville Junior High.

Q. How long were you there?

A. Half of the eighth.

Q. The other half of the eighth grade?

A. Yeah.

Q. After that?

A. Charles Drew.

Q. Junior High School?

A. Yeah.

Q. What grade were you in there?

A. Ninth.

Q. All of the ninth?

A. Yes.

Q. Did you go to high school?

A. North Miami Beach.

Q. Did you go to any other schools, other than those that you have mentioned?

A. No.

Q. Starting with North County Elementary School, which is the first school you went to in Dade County—is that right?

A. Yes.

[257] Q. Did you ever receive a paddling at that school?

A. Yeah; on the hands.

Q. What grade?

A. Second.

Q. Any other grades?

A. The third.

Q. Any others?

A. No.

Q. Can you specifically recall those paddlings and the reasons for them?

A. Not right now.
Q. Do you remember who paddled you?
A. No.
Q. The next school you went to is Bunche Park, right?
A. No.
Q. After North County, isn't it Bunche Park?
A. No.
Q. What school did you go to after North County Elementary?
A. Bunche Park.
Q. Were you ever paddled in Bunche Park?
[258] A. Yeah.
Q. Do you remember who paddled you there?
A. The fifth grade teacher.
Q. Do you remember his name?
A. Mr. Conn.
Q. What did he paddle you with?
A. A board.
Q. Where did he hit you?
A. In the rear end.
Q. On your rear end?
A. Yeah.
Q. Do you remember why he paddled you?
A. Being late.
Q. Any other reasons?
A. Hollering out one day.
Q. Where did he paddle you?
A. In the classroom.
Q. Were there other students in the classroom?
A. Yeah.
Q. In front of the entire class; is that what you are telling us?
A. Yeah.
Q. You were the only one who was paddled [259] in the fifth grade?
A. Nope.
Q. How many others were paddled; do you know?
A. I don't know how many, but lot of them. Just about all of them.
Q. Just about all the kids in the fifth grade were paddled by Mr. Cohen?
A. Yes.

Q. Did anybody cry?
A. Sometimes.
Q. Did you ever cry?
A. No.
Q. Were you in the sixth grade at Bunche Park?
A. Yeah.
Q. Do you ever recall being paddled in the sixth grade?
A. Yeah.
Q. When Mr. Cohen paddled you, were there any other teachers in the classroom?
A. Nope.
Q. Were there any other adults in the classroom?
[260] A. No.
Q. Did he ever go out of the classroom before he paddled, to go to the principal's office?
A. No; just call you up.
Q. Just call you up when you were late; is that right?
Mr. HOWARD. Your Honor, this is leading him and suggesting the answers to him.
The COURT. Don't lead him, Counsel.

By Mr. FEINBERG:

Q. You say you were in the sixth grade where?
A. Bunche Park.
Q. Did you ever get paddled in the sixth grade?
A. Yeah, on my hands.
Q. Do you remember by whom?
A. I forget the name. It was a lady.
Q. Where did she paddle you? I mean, where, in the school, did she paddle you?
A. In the classroom.
Q. Who else was in the classroom at the time?
A. Rest of the students.
[261] Q. Did she ever hit anybody else on the hands?
A. Yeah; that's all she do is hit you on the hands.
Q. What did she use?
A. A ruler.
Q. Did it hurt?
A. Sometimes.
Q. Do you remember what reasons she did that for?
A. Same, mostly, being late, like when you go to lunch and don't get back on time, for that; and if you don't do your work and mess around.

Q. Do you remember if she consulted with the principal before she did that?

A. I don't know.

Q. Were there any other teachers present in the room when she paddled you?

A. Nope.

Q. Any other adults in the room present when she paddled you?

A. No.

Q. That was the sixth grade.

Now, where did you go in the seventh [262] grade?

A. North Dade Junior High School.

Q. Do you remember being paddled there?

A. Yes.

Q. Who paddled you there?

A. Miss Williams.

Q. Who is she?

A. Social studies teacher.

Q. Mrs. Williams, did you say?

A. Yeah.

Q. Where did Mrs. Williams paddle you?

A. In the classroom.

Q. Were there other students present in the classroom?

A. All of them.

Q. Were you the only one that was ever paddled by Mrs. Williams?

A. No.

Q. Who else was paddled?

A. Some more children.

Q. When you say "paddled", what do you mean? What was used?

A. A board.

Q. Where did she get the board from?

[263] A. Off her desk.

Q. Do you recall if any other adults were present in the classroom when the paddling took place?

A. One time in the eighth grade.

Q. I'm not talking about the eighth grade; I'm talking about the seventh grade with Mrs. Williams.

A. No.

Q. Do you recall the reason she paddled people?

A. Playing around, fighting, hollering, arguing with each other, not working when you supposed to, talking back to her.

Q. How would she paddle you? Did she make you assume any kind of position?

A. Just stand up straight.

Q. Stand up in your seat?

A. Stand up by your desk.

Q. Did it hurt; do you remember?

A. No, not me.

Q. Did it hurt anybody else?

A. Yeah; some girls.

Q. How do you know that?

A. They were crying. Hollering, rather.

Q. This was in the classroom?

[264] A. Yeah.

Q. Do you remember any other teachers who paddled you, besides the teachers whom you named; Mr. Cohen and Mrs. Williams, in those grades?

A. From fifth on up?

Q. Yes; fifth, sixth and seventh.

A. Most of them I don't remember their names.

Q. Who were they?

A. I don't know.

Q. What positions did they hold in the school?

A. PE.

Q. By "PE", what do you mean?

A. Seventh grade.

Q. By "PE", you mean what?

A. PE class.

Q. Phys ed class?

A. Yeah.

Q. Which grade was this?

A. Seventh. I didn't get a beating from him, though, not in his class.

Q. Did you see him beat anybody in the seventh grade?

[265] A. Yeah, lot of people.

Q. You are talking about at North Dade, right, in the seventh grade?

A. Yeah.

Q. Where would he get the paddle from?

A. I seen him get it off his desk, out of his desk drawer.
Q. Have you seen him get it out of his desk drawer?
A. Yeah.
Q. Do you recall why he paddled students?
A. Sometimes like a lady teacher, she will call him.
Q. Excuse me?
A. Like a lady that don't want to whip you or something like that, she call him.
Q. Did that ever happen to you?
A. One time.
Q. Do you remember who the lady teacher was?
A. Mrs. Williams.
Q. Is she the one who paddled you before, though?
A. Yeah.
[266] Q. Where did the PE teacher paddle you, at her request?
A. In his office?
Q. You mean the PE teacher's office?
A. Yeah.
Q. Did he take you to the principal's office at that time?
A. Nope.
Q. Who was present in the PE teacher's office when you were paddled?
A. Him and Miss Carter and the other PE teacher.
Q. Miss Carter is who?
A. PE teacher.
Q. You mean Mr. Carter?
A. Yes.
Q. Do you recall ever being paddled on other occasions by this same PE teacher or other PE teachers in North Dade?
A. Nope.
Q. Did anybody else paddle you at North Dade?
A. Assistant principal.
Q. Do you remember how many times he [267] paddled you?
A. Once.
Q. Do you remember what it was for?
A. Running around the field when I was suppose to be at lunch.
Q. Do you remember where he paddled you?

A. In his office.
Q. Where was that; in the school?
A. Yeah.
Q. Do you remember if he took you to the principal's office first?
A. She was there.
Q. The principal was present?
A. Yeah.
Mr. HOWARD. I thought he said the principal did the paddling.
The WITNESS. I said the assistant principal.

By Mr. FEINBERG:

Q. That was a female principal at North Dade; is that what you are telling us?
A. Yes.
Q. She was present during this paddling?
A. Yeah.
[268] Q. Do you recall ever being paddled on other occasions by this assistant principal?
A. Nope.
Q. Do you recall any other—you were at North Dade in the seventh and half of the eighth grade?
A. Yeah.
Q. Do you recall any other paddlings you received in North Dade Junior High, other than what you have told us already?
A. Through the eighth grade?
Q. The seventh and half of the eighth in North Dade Junior High, I want you to think; were there any other paddlings that you might have received, other than what you have told us?
A. In the eighth grade.
Q. At North Dade?
A. Yeah.
Q. Who paddled you there?
A. I don't know his name.
Q. Who was he in the school? What position did he hold?
A. I don't know that either.
Q. Where did he paddle you in the school?
A. In the classroom. It was an empty [269] room.
Q. It was an empty classroom?

A. Yeah.
Q. Do you remember the reason why you were paddled by him?
A. Fighting.
Q. Did he see you fighting?
A. Yeah.
Q. Was the other boy paddled, who was fighting with you?
A. Yeah.
Q. Were you both paddled in the empty classroom?
A. Yeah.
Q. Where did he get the paddle from?
A. I don't know. He just went out and come back with it.
Q. Were any other adults present in this empty classroom when you were paddled?
A. No.
Q. Any other students present?
A. Just us two.
Q. Just you and the paddler?
A. And the other boy.
[270] Q. Do you remember how many licks you got that time?
A. Three.
Q. You testified that you went, then, to half of the eighth grade at Brownsville?
A. Yeah.
Q. Do you remember receiving any paddlings in Brownsville?
A. Yeah.
Q. By whom?
A. Mr. Cooper.
Q. Who else?
A. Miss Williams.
Q. That's a different Miss Williams?
A. Yeah.
Q. Who else?
A. That's all I know.
Q. Who is Mr. Cooper?
A. Assistant principal, I think.
Q. Where did he paddle you in the school?
A. In his office.
Q. Who was present?

A. Another man. I don't know his name.
Q. Was he the principal?
[271] A. I don't know—no, he wasn't the principal.
Q. You don't remember who the principal was? Is that what you said?
A. Yeah.
Q. Who is Miss Williams?
A. English teacher.
Q. She paddled you in the eighth grade?
A. Yeah.
Q. Where did she paddle you in the school?
A. Classroom.
Q. What did she use to paddle you with?
A. A board.
Q. Did she paddle anybody else in the classroom?
A. Sometimes.
Q. Did you see them being paddled?
A. Yeah.
Q. Were there any other adults in the classroom at the time the people were paddled in that classroom?
A. No.
Q. Do you remember the reason you were paddled?
[272] A. Ain't finished my work and I was back there talking, so she caught us.
Q. On how many occasions did she paddle you in the classroom?
A. Once.
Q. Where did she get her paddle?
A. Out of her drawer.
Q. Did she leave the classroom before she paddled you?
A. Not when she paddled me.
Q. How soon after you didn't finish your work did she paddle you?
A. When she found out I ain't finished.
Q. As soon as she found out?
A. Yeah.
Q. How did you feel about being paddled in the classroom in the eighth grade?
A. Normal, I guess.
Q. Did she hurt when she paddled?
A. Nope.

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Q. Did you ever see her paddle any girls?
A. Nope.
Q. Nobody else paddled you except Mr. Cooper and Miss Williams, in the eight grade, that [273] you can remember?
A. That's all.
Q. Where did you go next; in the ninth grade?
A. Charles Drew.
Q. Were you ever paddled in Charles Drew?
A. Yeah.
Q. Do you remember how many times?
A. Nope.
Q. Can you tell us approximately how many times?
A. Naw.
Q. Was it more than five?
A. Yeah, it was more than five.
Q. More than ten?
A. I think so. I don't know.
Q. Did you stay at Charles Drew for the entire ninth grade?
A. Yeah.
Q. Can you remember any specific times that you were paddled at Charles Drew?
A. What you mean?
Q. Can you remember who paddled you at Charles Drew?
[274] A. Oh.
Q. Give me the names of all the people that paddled you at Charles Drew.
A. Mr. Challenger [phonetic].
Q. Who else?
A. Mr. Wright.
Q. Which Mr. Wright?
A. Both of them; the principal and my PE teacher. Mr. Kemp.
Q. Who is he?
A. PE teacher?
Q. Yes.
A. Deliford, Barnes, and that's all I remember.
Q. Who is Mr. Challenger?
A. Sheet metal teacher.
Q. Where did he get the paddle from?

A. Out of his drawer.
Q. Did you ever see anybody else paddled by Mr. Challenger?
A. Yeah.
Q. Do you remember approximately how many people?
A. Nope.
[275] Q. Was it more than five?
A. During the whole year?
Q. Yes.
A. Yeah, it was more than five.
Q. More than ten?
A. Yeah.
Q. More than twenty?
A. Nope.
Q. When Mr. Challenger paddled you and the other people, were there ever any adults present besides him?
A. Sometime the other teacher be there——
Q. Excuse me; what kind of teacher?
A. Small English teacher, Mr. Kay.
Q. Was he in there all the time when Mr. Challenger paddled?
A. No.
Q. Can you remember a specific time that you were paddled that Mr. Kay was not there?
A. I know I was paddled one time when he wasn't there.
Q. You remember that specifically?
A. Yeah.
Q. Do you remember why you were paddled [276] that time?
A. Messin' around.
Q. Do you remember how many licks you got at that time?
A. One.
Q. Did Mr. Challenger ever give more than one lick?
A. Not to me. I don't see him give nobody else more than one, either.
Q. Did it hurt?
A. Nope.
Q. Do you know whether, before Mr. Challenger paddled you, he went out of the room?
A. No, he didn't go out.
Q. Do you remember if Mr. Wright, the principal came into the room before you were paddled?

A. In Challenger's room?
Q. Yes.
A. No, he ain't come in.
Q. Were there any other students in the room when you were paddled by Mr. Challenger?
A. Yeah.
Q. Who?
A. The whole class.
[277] Q. Were they able to see the paddling?
A. Yeah.
Q. You were able to see the other people paddled; is that right?
A. Yeah.
Q. You mentioned that Mr. Wright, the PE teacher, and Mr. Kemp, the PE teacher, paddled you.
Where did they paddle you?
A. In the gym.
Q. Do you remember how many times they paddled you?
A. Three.
Q. How many times did Mr. Wright paddle you; the PE teacher?
A. How many licks he give me?
Q. On how many occasions.
A. Mr. Wright paddled me three—no, two times.
Q. Mr. Kemp?
A. Three.
Q. Mr. Kemp paddled you three and Mr. Wright paddled you two?
A. Yeah.
Q. That was all in the Drew school; is [278] that right?
A. Yeah.
Q. Do you remember any of those paddlings particularly? Do you have any recollection of those paddlings by Mr. Wright, let's say?
A. What you mean?
Q. How would he paddle you?
A. Touch the desk. Sometimes just stand up straight.
Q. Did you ever see him paddle anybody else?
A. Yeah.
Q. Who?
A. More children.

Q. What?
A. Some more students.
Q. Was he paddling them for the same reason he was paddling you?
A. Sometimes.
Q. What reason would that be?
A. Not dressing out.
Q. What do you mean?
A. Not putting on the proper uniform for PE.
[279] Q. What was the proper uniform for PE?
A. White T-shirt, white socks, tennis shoes and brown shorts.
Q. You say you were paddled for that reason?
A. Yeah.
Q. Did Mr. Kemp paddle you also for that reason?
A. Yeah, he's the one that paddled me for that.
Q. How many times were you paddled for failing to dress out; do you recall?
A. About four times.
Q. Do you recall what article of clothing you didn't have during each of those times?
A. Sometimes I might have my—one time I didn't have no white socks.
Q. Why not?
A. Because somebody stole them.
Q. Did you explain that to Mr. Kemp?
A. They ain't want to hear all of that.
Q. How do you know they didn't want to hear that?
A. He said he don't want to hear it.
[280] Q. Did you try to explain that to him?
A. Yeah.
Q. What other reasons did they paddle you for?
A. If I be playing around the class, running, going out before time, come in late, eating in the class.
Q. I want to get back to the dressing out. Were you ever paddled for not having any other article of clothing? You mentioned a few articles of clothing that you had to wear.
A. Yeah.
Q. One time for not having white socks. What was another time?
A. I had no tennis shoes then.
Q. Why didn't you have any tennis shoes?

A. Somebody stole them.
Q. Why didn't you buy new tennis shoes?
A. Because I didn't have no money.
Q. Who paddled you then; Mr. Wright or Mr. Kemp?
A. Mr. Kemp.
Q. Did you explain it to Mr. Kemp?
A. Tried.
[281] Q. What did he say?
A. He said, "That ain't no excuse."
Q. Did you tell him that you didn't have any money to buy new shoes?
A. I ain't tell him I ain't got no money. I tell him I couldn't get none right now.
Q. Do you live in a public housing project now?
A. Yeah.
Q. Does your mother work?
A. Nope, not that I know of.
Q. Does your father work?
A. Yeah.
Q. What does he do?
A. Finishing concrete, I think.
Q. Is that what he did at that time?
A. When I was——
Q. In the eighth grade.
A. When I was going to the eighth grade?
Q. Yes.
A. Yeah.
Q. How many brothers and sisters did you live with at that time?
A. All of them. Seven. I make eight.
[282] Q. You are the eighth?
A. Yeah.
Q. Are you the oldest or the youngest or in the middle or what?
A. I'm the oldest.
Q. So they are all younger than you; is that right?
A. Yeah.
Q. Your parents both live at home?
A. Yeah.
Q. Do you remember how many times you were paddled and how many licks you received for not dressing out?
A. Three. Sometime two.

Q. Were you ever paddled for any other reason, in PE, that you can remember specifically?
A. Being late.
Q. Anything else?
A. Nope.
Q. Do you know if you have ever had a psychological examination by a doctor, a psychologist?
A. You mean taking tests?
Q. Yes.
A. Nope.
[283] Q. You don't know?
A. [No reply.]
Q. Do you remember when Mr. Deliford paddled you?
A. Yeah.
Q. Do you see him in the courtroom today?
A. Yeah.
Q. Can you point to him?
A. In the corner. Right over in this corner.
Mr. FEINBERG. Let the record reflect the witness has identified Mr. Deliford.

By Mr. FEINBERG:

Q. Do you know Mr. Deliford?
A. Yeah.
Q. Can you get up and point to him. Get close to him and point to him, please. Get up and walk down and point to him.
A. Oh, man!
The COURT. What color coat does he have on, young fellow?
The WITNESS. Gold.

By Mr. FEINBERG:

Q. What color shirt does he have on?
[284] A. Yellow.
The COURT. You are talking about the man with his back to that steel cabinet?
The WITNESS. Yeah.
Mr. FEINBERG. Now let the record reflect the witness has identified Mr. Deliford.

By Mr. FEINBERG:

Q. Do you recall when Mr. Deliford paddled you?
A. What dates?

Q. No. Do you recall that he paddled you?
A. Yeah.
Q. Do you recall the incident? Do you recall the paddling?
A. Yeah.
Q. Where did it take place?
A. In his office.
Q. Do you recall the reasons for the paddling?
A. No.
Q. Do you recall who else was in the office?
A. Nobody but him.
[285] Q. Was any other student in the office? Were any other students in the office?
A. Not in his office then. I was the only one in there then.
Q. Just you and him?
A. Yeah.
Q. How many licks did he give you; do you remember?
A. Five.
Q. Is that the only time Mr. Deliford paddled you?
A. Nope.
Q. Do you remember the next time he paddled you?
A. In the band room.
Q. What were you doing in the band room?
A. That's the class I go.
Q. Were there any other teachers or adults in the band room at the time you were paddled?
A. Yeah.
Q. Who was that?
A. The band teacher.
Q. Were there any other students in the classroom?
[286] A. The rest of the students.
Q. Do you remember why Mr. Deliford paddled you, at that time?
A. I walked out in the hall with no hall pass.
Mr. HOWARD. I didn't hear that.
The WITNESS. I didn't have a hall pass.

By Mr. FEINBERG:

Q. You said you were in the band room; is that right? How did you get into the band room from the hall?
A. He took me in there.
Q. That was the class you were to attend at that time; is that right?

A. Yeah.
Q. Where did Mr. Deliford get his paddle, at that time?
A. Out of his office?
Q. He went back to his office to get his paddle?
A. Yeah.
Q. Do you remember how many licks you got that time?
[287] A. Three.
Q. Do you remember if Mr. Deliford ever paddled you any other time?
A. Nope.
Q. You don't remember or he didn't do it?
A. I don't remember.
Q. Do you remember when Mr. Barnes paddled you?
A. Yeah.
Q. Where was that in the school?
A. In Mr. Deliford's office one time and upstairs in the bathroom one time.
Q. Let's talk about Mr. Deliford's office.
What did he paddle you for then?
A. I think for acting up in the class. I don't know what class.
Q. Did he see you acting up in the class?
A. Nope.
Q. How did you get to his office?
A. They took me there.
Q. Who is "they"?
A. Mr. Barnes.
Q. How did Mr. Barnes know to get you?
A. He was walking in the hall.
[288] Q. Where did he get the paddle from?
A. I don't know. He had it when I seen him.
Q. He had it while he was walking in the hall?
A. Yeah.
Q. Did you ever see him with a paddle, at other times while he was walking in the hall?
A. Yeah.
Q. Did he ever walk in the loft upstairs?
A. Yeah.
Q. Did you ever see him with a paddle then?
A. Yeah.
Q. Where did he carry the paddle?
A. The way he carried it?

Q. How did he carry it?
A. In his hand. Sometime he carried it under his arm.
Q. Did you ever see him use it in the loft area?
A. In the bathroom. Not in the open.
Q. You mean when he paddled you?
A. Yeah.
[289] Q. Did you ever see him paddle anybody else in the bathroom?
A. Yeah.
Q. Was that a different time than he paddled you or at the same time?
A. The same time.
Q. Did you ever see him paddle anybody else in the bathroom, at a different time?
A. No.
Q. Did you ever see him paddle anybody in the classroom or in the loft?
A. Nope.
Q. This is Mr. Barnes; is that right?
A. Yeah.
Q. Other than the time that Mr. Barnes paddled you in the bathroom, did he ever paddle you?
A. What's that?
Q. Did he ever paddle you any other times other than in the bathroom? Mr. Barnes, that is.
A. Yeah; in Mr. Deliford's office.
Q. Other than that time?
A. Not that I remember.
Q. Excuse me?
A. Not that I remember.
[290] Q. Tell me about the bathroom paddling at that time.
A. I was doing nothing. I was almost late for PE.
Q. Where were you when you were stopped?
A. Upstairs in the loft.
Q. Isn't Mr. Deliford's office upstairs?
A. No.
Q. Is Mr. Wright's office upstairs?
A. No.
Q. Whose office is upstairs? Is Mr. Barnes' office upstairs?
A. No. I don't know.

Q. Who stopped you?
A. Mr. Dean.
Q. Mr. Dean?
A. Yeah, I think that's his name.
Q. What did he say to you; do you remember?
A. He said I was late.
Q. What did you say?
A. "I got two more minutes, and I can make it."
Q. What did he do?
[291] A. He said I couldn't make it, so he took me to Mr. Barnes.
Q. Where was Mr. Barnes at the time?
A. He was walking to the bathroom at the time.
Q. Did he have a paddle with him?
A. Yeah.
Q. Did you see it?
A. Yeah.
Q. You are sure of that?
A. Yeah.
Q. You got to the bathroom; is that right?
A. Yeah.
Q. Then what happened?
A. When I got there there was lots of children, lots of boys.
Q. How many boys were there?
A. Maybe fourteen, fifteen.
Q. You say "there." Where do you mean by "there"?
A. In the bathroom, inside.
Q. What were they doing in there?
A. Standing up when I got in there.
Q. Where was Mr. Barnes?
A. Standing at the door.
[292] Q. Then what happened?
A. He come inside.
Q. Who is "he"?
A. Mr. Barnes.
Q. He came inside where?
A. The bathroom.
Q. Where were you at the time?
A. In the bathroom.
Q. Who told you to go in the bathroom?
A. Mr. Barnes.

Q. Then what happened?
A. He start beating them boys at first.
Q. Did he say anything to them before he beat them?
A. "Get over here," and that's all.
Q. How did he make them stand when he beat them?
A. I got to show that too?
Q. Sure. Show me how he made them stand when he beat them. Stand up and show me.
A. Well, you know how it is.
Q. Stand up, Roosevelt.
A. Well, you know how the squares are in the bathroom, the lines on the floor, he tell me to get [293] to a certain line and then bend over to the urinate thing.
Q. On the what?
A. He tell you to stand like the third line and like this is the bath urinate.
Q. That is what?
A. Urinate place.
Q. Then what did he say?
A. He says—like the line here going across, so he tell you stand up and touch the urinal thing.
Q. Did you touch the urinal? Is that what he said, "Bend over and touch the urinal"?
A. Yeah.
Q. He said that to the other boys; is that right?
A. Yeah.
Q. Is that before he paddled you or after he paddled you?
A. Before.
Q. What did he do when they stood over and leaned against the urinal?
A. Beat them.
Q. With what?
[294] A. A board.
Q. Do you remember how many licks he gave?
A. All different kinds of licks. I mean all different kinds in numbers.
Q. Did they say anything?
A. Yeah, they say something.
Q. What did they say?
A. All kinds of stuff. They say—some of them hollering, cry, prayed, and everything else.
Q. Did the licks hurt them?

A. I guess so.
Q. When did he paddle you; before, while he was paddling the fifteen boys, or after, or what?
A. After he paddle all of them, sending them out and then he paddled me.
Q. What did he tell you to do?
A. Same thing; stand behind the line and touch the urinate thing.
Q. Then did he paddle you?
A. No.
Q. Why not?
A. Because I ain't stand up there.
Q. Why is that?
A. I told him I could have made it if he [295] would have left me went.
Q. You mean made it to the class? Is that what you mean?
A. Yeah.
Q. Then what happened?
A. Then he said something, I don't know what it was, and then he said, "Bend over," and I ain't want to bend over, so he pushed me against the urinate thing, the bowl, and then he snatched me around to it and that's when he hit me first.
He first hit me on the backsides and then I stand up and he pushed me against the bathroom wall, them things—that part the bathroom, the wall.
Q. The partition?
A. Between the toilets, he pushed me against that and then he snatched me from the back there and that's when he hit me on my leg, then hit me on my arm, my back and then right across my neck, in the back here.
Q. Did those blows hurt?
A. Yeah, all of them hurt.
Q. Do you know if you had any marks from those blows?
A. No.
[296] Q. You don't know whether you did?
A. No.
Q. Then what happened?
A. After he got through I just said, "You're not suppose to beat nobody like that," and I said, "I'm going down to talk to Mr. Wright."
Q. The PE teacher or the principal?

A. The principal.
Q. Then what happened?
A. Then he said, "Let's do that." So he got me by my shirt and started to push me downstairs and I got downstairs and they weren't going to listen to what I had to say.
Q. I didn't hear you.
A. They wouldn't listen to what I had to say.
Q. Who were "they"?
A. Mr. Wright.
Q. Was anybody else in the office when you got down to Mr. Wright's?
A. Deliford.
Q. You say neither of them would listen to what you had to say?
A. No.
[297] Q. So what happened?
A. Asked me what I was doing late and I told them I could have made it if they let me go and wouldn't have stopped me.
Q. Then what happened?
A. Then they told me to get out in front and sit down and wait.
Q. Then what happened?
A. Then I went home, after school was out.
Q. Mr. Wright didn't paddle you at that time, did he?
A. No.
Q. Did you wait and go home when school was let out?
A. Yeah.
Q. Is that what you did?
A. Yeah.
Q. When you got home, did you tell your parents about it?
A. Yeah.
Q. Who did you tell?
A. Both of them, mommy and daddy.
Q. Did they do anything about it?
[298] A. My daddy come down to the school.
Q. Were you with him?
A. Yeah.
Q. Who did you see?
A. Mr. Deliford and Mr. Barnes. I don't know if Mr. Wright was there at the time—yeah, he were there.
Q. Do you remember what your father said?

A. Not all.
Q. Do you remember part?
A. First he went down there and he asked to talk to Mr. Barnes.
Q. First he talked to Mr. Barnes.
Did he go down to the school more than once?
A. Yeah.
Q. Let's talk about the first time.
When you first got to school, who did he see?
A. Mr. Barnes and Mr. Deliford, in Mr. Deliford's office.
Q. What did your father tell them?
A. He want to talk to them, and then we went to Mr. Wright's office and he talked to all three [299] of them.
Q. What did your father say?
A. At first he asked why he wants to beat—he say, "Why do you want to beat my son," and——
Q. Was it just you and your father who went to school at that time?
A. Yeah.
Q. What did they say?
A. I don't remember what they said.
Q. Did they say they were not going to beat you any more?
A. No, they don't say that.
Q. Did they say they would beat you any more?
A. They ain't exactly say that neither.
Q. Was your father satisfied after talking to them?
A. Not right then, no. He got madder.
Q. Was he angry?
A. Yeah.
Q. Were you paddled any other times, by Mr. Barnes, after that?
A. No.
Q. Who were you paddled by after that?
[300] A. Mr. Wright.
Q. Mr. Wright the principal?
A. Yeah.
Q. Where did that paddling take place?
A. In his office.
Q. In Mr. Wright's office?
A. Yeah.
Q. Was anybody else present?

A. Mr. Deliford and Mr. Barnes.
Q. Did you take that paddling?
A. Not exactly take it.
Q. Did you resist it?
A. Yeah.
Q. How many times did he paddle you?
A. That time?
Q. Yes.
A. How many licks did I get?
Q. Do you remember?
A. No.
Q. Did it hurt?
A. Yeah.
Q. Where did ne hit you?
A. On my backsides and on my arm, my wrist.
[301] Q. On your wrist?
A. Yeah.
Q. What happened next?
A. After I got the beating?
Q. Yes.
Before I ask you that; do you remember why they paddled you at that time?
A. I remember why he say he paddled me.
Q. What did he say?
A. A boy broke some glasses in sheet metal and they say I did it, but he told me he had broke them and the boy say he was going to pay for them, he didn't mean to break them. It wasn't my fault.
Q. Did they paddle the other boy?
A. No.
Q. They paddled you, though?
A. Yeah.
Q. You say they hit you on the backsides and on your wrist. Did they hit you any place else?
A. Nope.
Q. Then what happened?
A. I went home. Not right then, though.
Q. At the end of the day?
A. Yeah.
[302] Q. Did you tell your parents about it that time?
A. Yeah.
Q. Did your father do anything about it?

A. He come down there; me, him and another man name Mr. Donn [phonetic].
Q. Who was Mr. Donn?
A. Just a friend.
Q. A friend of your father?
A. A friend of everybody's.
Q. Do you remember who your father and Mr. Donn and you saw, at that time?
A. Mr. Wright and Mr. Barnes and Mr. Deliford.
Q. Did the paddling hurt that time?
A. When Mr. Wright beat me?
Q. Yes.
A. Yeah.
Q. Where did it hurt you?
A. Mostly on my wrist.
Q. What was wrong with your wrist? Could you see any visible signs of the paddling?
A. On my wrist, yeah.
Q. What did it look like?
[303] A. Like a mark.
Q. Was it swollen?
A. Yeah.
Q. You say you went to school with Mr. Donn and your father?
A. Yeah.
Q. What is your father's name?
A. Willie Everett.
Q. You got to school with Mr. Donn and your father, and who did you see?
A. Mr. Deliford and Mr. Barnes and Mr. Wright.
Q. Where?
A. In the office?
Q. Whose office; do you remember?
A. Mr. Wright's.
Q. Do you remember what your father said at that time?
A. No.
Q. Do you remember if your father was angry?
A. Yeah, he was angry.
Q. Boiling mad?
A. Somewhere close to that.
[304] Q. Do you remember what they said to him? Do you remember if they told him they wouldn't paddle you any more?

A. Yeah, they said—he said, "If you don't want your child paddled, don't send him to school then," or something like that. Mr. Wright said that.

Q. "Don't send him to Drew", you mean?

A. Yeah; "take him out of school."

Q. Then what happened?

A. I forget what they were talking about. Mr. Wright told my daddy I had attacked the teacher.

Q. Is that the reason he said he paddled you?

A. No, that ain't the reason. He just say I did, just brought that up.

Q. They just brought that up?

A. Yeah.

Q. Did you attack a teacher?

A. Nope.

Q. Did they bring the teacher in?

A. No. As we were going out the door to go, I seen the teacher, so I had called him and get it straight with my daddy.

Q. You mean your father was with you [305] at the time?

A. Yeah.

Q. You wanted your father to talk to the teacher?

A. Yeah.

Q. What happened?

A. Well, he was going in the library, so I went in and called him. He come back out—he was coming back out of the library with me.

Q. The teacher?

A. Yeah. I said, "Mr. Wright say I had attack you," like that.

He said, "Me?"

I said, "Yeah." He said, "I don't know nothing about that."

So he come back out the door. He was going to tell my daddy that. As he was coming out the door my daddy was coming and he was walking over there to him and Mr. Wright told him to go back in the library, or go wherever he was going.

Q. Mr. Wright directed the teacher not to talk to your father; is that right?

A. Yeah.

Q. Did you ever get any treatment for [306] any injuries that you received as a result of that paddling? Medical treatment, I mean.

A. Yeah, I went to the hospital.

Q. When did you go to the hospital?

A. The same day I got hit.

Q. Did you see a doctor there?

A. Yeah.

Q. Did he give you any medication for your arm or your backsides?

A. No; he told me to put something cold on it and some kind of pain pills, whatever they call it.

Q. They gave you pain pills?

A. Some kind.

Q. Did you take them?

A. Yeah.

Q. How long did it take before the pain stopped; do you remember?

A. Sometime it stopped and it started right back up again.

Q. How long did it take before it stopped completely? It doesn't hurt you now, does it?

A. No.

Q. How long did it take before it stopped [307] completely?

A. About a week. Seven or eight days.

Q. Were you able to play during that period of time?

A. Yeah, but not right.

Q. Were you able to use the arm? That's what I am asking you.

A. No, not at that time.

Q. Were you paddled any other times after that that you can recall?

A. Nope.

Q. Do you remember whether or not your father told them not to paddle you?

A. No; he said, "If you are going to paddle him, paddle him right and not like an animal," or something like that.

Q. Why did he say that? Which time did he say that; the first time or the second time?

A. Both times.

Q. Why did he say that the second time? Because of your arm?

A. Yeah.
Q. Do you remember what Mr. Wright or Mr. Deliford or Mr. Barnes said, in response to that?
[308] A. Nope.
Q. Where are you working now, Roosevelt?
A. Nowhere right now.
Q. You are not working at a gas station?
A. No; I stopped, two days. I ain't stopped; he move to another place.
Q. Did you go to the tenth grade?
A. Yeah.
Q. Did you go to the eleventh grade?
A. Nope.
Q. Why not?
A. Well, I want to go to—I come from court when——
Q. You mean this court?
A. No; another court.
Q. Is that for something you did in school?
A. No.
Q. Is it true that you were expelled from school?
A. Yeah.
Q. Do you remember what that was for?
A. Having a knife.
Q. What grade were you in when you were [309] expelled?
A. Tenth.
Q. Were you ever suspended from school?
A. Yeah.
Q. I mean for short periods of time as opposed to being expelled permanently.
A. Yeah.
Q. You were?
A. Yeah.
Q. Can you remember how many times?
A. From that school?
Q. Any place.
A. About four times.
Q. Do you remember if you took any special education classes to teach you how to read?
A. Yeah.
Q. When was that?
A. Sixth grade and Charles Drew, too.
Q. You don't remember whether you saw a psychologist or not?

A. I don't know who is what I seen. They ain't gave me no test.
Q. You saw someone but you don't know who it was?
[310] A. Yeah.
Mr. FEINBERG. No further questions.
[Short recess.]

CROSS-EXAMINATION

By Mr. HOWARD:
Q. Roosevelt, I am just going to ask you a few questions and then you will be through.
You were telling Mr. Feinberg a while back about getting paddled on the hand and on the behind during elementary school and North Dade and at several of these other schools.
Do you remember telling him about that?
A. Yeah.
Q. Most of the time you would just get one lick on the hand or on the bottom?
A. Most times.
Q. When you got these, would it help you behave when you were acting up in class?
A. No. Sometime.
Q. I can't hear you.
A. When I went to elementary school it did.
Q. You wouldn't go on misbehaving after [311] the teacher would whack you with a ruler, would you?
A. Nope; elementary——
The COURT. Speak up so we can hear you. I can't hear you.

By Mr. HOWARD:
Q. You have to speak up a bit louder.
A. In elementary?
Q. Yes.
A. [No reply.]
Q. You said you were suspended about four times all together?
A. Yes.
Q. Did you have some suspensions before you got to Drew Junior High?
A. Yeah.
Q. You did?
A. Yeah.

Q. How many? Do you remember?

A. No.

Q. How many days were they for each time; do you remember?

A. Five and three.

Q. What were those suspensions for?

A. One was for fighting. I don't know [312] what the other one was for.

Q. Were you called down to talk to the principal or assistant principal or a guidance counsellor, from time to time, about your conduct in school?

A. Yeah. Just like coming to class and talking.

Q. Did you talk with your teacher or with somebody who was a guidance counsellor every once in a while, because of acting up in class?

A. Nope.

Q. You said you didn't remember having psychological tests?

A. No.

Q. Do you remember a teacher or counsellor named Calderman or Salderman? Did you have a teacher or counsellor by that name?

A. Salderman? No, I don't remember that name.

Q. It could be Keller; did you have a teacher named Keller?

A. No.

Q. I'm not talking about Drew; I'm talking about back before you went to Drew. Do you [313] remember talking to somebody named Keller?

A. Nope.

Q. Do you remember talking to Mr. Miller? Do you remember Mr. Miller, at North Dade?

A. Yeah, I remember him.

Q. Do you remember talking to him about your program in school and about your conduct?

A. He ain't call me, just like that, to the office.

Q. What?

A. Like when I went to the office and got a whipping, then after I got the whipping then he talked to me.

Q. Did he talk to you in his office?

A. No. Standing up right there, like going out the door.

Q. Do you remember a counsellor named Mr. Jones, at Drew?

A. Nope.

Q. You don't remember talking with him about your conduct in school and how to get along with other people?

A. I talked to a lady.

Q. To a lady?

[314] A. That's her name, Miss Jones.

Q. I don't know Miss Jones, but you did talk to a lady in Drew about your behavior and how to act in school?

A. She talking about don't get in trouble, maybe like when I was arguing with somebody, she say, "Just forget about it and walk away."

Q. Where was this? Was that in her office?

A. In the hall.

Q. Did you talk to the lady more than one time about how you were behaving and how you ought to act?

A. I don't know.

Q. Roosevelt, you were kind of getting in trouble more or less lots of times, weren't you, while you were in school?

Mr. FEINBERG. Your Honor, I object to that question. I think the record speaks for itself. It's already in the file.

The COURT. He is not asking what the record says. He wants to know if he is in lots of trouble.

Mr. FEINBERG. I think the question is [315] too general. If he wants to ask him a specific time, fine.

The COURT. Overruled.

By Mr. HOWARD:

Q. Roosevelt, didn't you get——

Mr. FEINBERG. In that case, Your Honor, I will stipulate he did get in trouble very often at school.

Mr. HOWARD. I would like to be able to examine the witness on it. I am not asking for a stipulation.

The COURT. You may go ahead.

By Mr. HOWARD:

Q. When you would get in trouble in school, in elementary and junior high and so on, wouldn't the teacher ordinarily talk to you about it, or the principal would talk to you about it, and try to find out what was the matter; try to help you so you would not get in trouble again.

A. Most when I get a whipping they just——

Q. What?

A. Mostly they call me—like I be in elementary, call you up, give you a licking and sit down and don't do it no more.

[316] Q. Lots of your teachers——

Mr. FEINBERG. Your Honor, I object. I think the witness was testifying and he was interrupted. I think he has a right to explain his answer.

The COURT. Do you have something else you want to say to that question?

The WITNESS. Yeah.

The COURT. Go ahead.

The WITNESS. In junior high, when I get a whipping they first ask the teacher whatever they see you do, like that, what happened, and then after they asked what happened—sometimes, though, during North Dade they did, they listened to you, they say you were wrong, you say you wasn't wrong.

They say, "Well, guess the teacher is lying," or something like that.

By Mr. HOWARD:

Q. In North Dade sometimes you would explain and then you wouldn't get punished? Is that what you are trying to tell me?

A. Yeah.

Q. Lots of your teachers talked to you from time to time, didn't they, about your behavior and about how to get along in school and how to get [317] along with the other students and the teacher?

A. They talk to me, like walking in the hall, like when I first get—like seeing the principal like seeing you at lunch, and sitting with you, they will start talking with you, but they ain't never call me down just to talk about nothing.

Q. I want to talk about the paddlings that you received in Drew, Roosevelt, and let me see if we can get straightened out on them.

The first time you were paddled at Drew, it was Mr. Deliford that paddled you; is that right?

A. Yeah.

Q. Wasn't that because of some commotion in the band room? Wasn't that what led to Mr. Deliford giving you some licks that day?

A. Some commotion, no. That was because I had been in the hallway with no pass.

Q. That was when Mr. Dean took you to see Mr. Barnes, wasn't it?

Mr. FEINBERG. Your Honor, Mr. Howard is arguing with the witness; I believe he is utilizing referral slips from the school in which the depositions are incomplete and not accurate.

[318] The COURT. He just asked him a question.

Mr. FEINBERG. He is arguing with the witness.

Mr. HOWARD. I am testing his memory.

Mr. FEINBERG. The man said, "No."

The COURT. That is perfectly proper cross-examination. He simply is attempting to refresh his recollection. If the young fellow doesn't agree, all he has to do is say no, just as he did then.

You can proceed, Mr. Howard.

By Mr. HOWARD:

Q. Roosevelt, the first time that you had a paddling from Mr. Deliford, wasn't that when you were in Mr. Cuff's class, the band class, and you had been talking and cutting up in class and then running out and almost knocking him down?

Do you remember that?

A. No, I don't remember that.

Q. You don't remember that at all?

A. No.

Q. You said Mr. Deliford paddled you because of what, now?

[319] A. I was in the hall with no hall pass.

Q. Are you sure that wasn't the time that Mr. Dean took you in to see Mr. Barnes?

A. That was a different time.

Q. You are telling me you don't remember this business in the band room, fighting and cutting up and calling out, and being taken by Mr. Deliford then to his office and getting some licks on account of that?

Do you remember that?

A. I remember getting in the bathroom for being in the hall. I don't remember getting the whipping in the band room.

Q. At the time Mr. Dean found you in the hall and took you in to see Mr. Barnes in the rest room; do you remember that?

A. Yeah.

Q. Mr. Barnes gave you only two licks, didn't he, in the rest room?

A. No, he didn't give me no two licks.

Q. What?

A. You mean with the board?

Q. I didn't hear you.

A. You mean with the board?

[320] Q. Yes.

A. No, he didn't give me no two licks.

Q. How many do you say he gave you?

A. I don't know.

Q. You don't know?

A. He just start hitting.

Q. Did you say that there were fourteen or so other boys in there, and Mr. Barnes was giving licks to them, too, in the bathroom?

A. Yeah, he was beating them.

Q. He was what?

A. Yeah.

Q. Are you sure about that?

A. When I come in there.

Q. Wasn't he showing them out to class because the bell was about to ring, or already had rung?

A. When Mr. Dean had stopped me and was bringing me to the bathroom, I ain't know where he was taking me first, but he was walking toward the bathroom and Mr. Barnes was walking across the loft area to the bathroom with some more boys.

He told them to go inside, and Mr. Dean took me and told him I was late and I had told [321] him I could have made it if they wouldn't have stopped me because I had two more minutes and they said I couldn't make it.

Then he took me in the bathroom and told me to stand against the wall and wait.

The COURT. What he is asking is whether or not he was paddling boys other than you, in there.

Is that what your question was, Mr. Howard?

Mr. HOWARD. Yes, sir.

The WITNESS. Yes, he was paddling more boys. He paddled them first.

By Mr. HOWARD:

Q. Let's talk about the time that Mr. Wright paddled you. That was in his office, wasn't it?

A. Yeah.

Q. What did you say that paddling was for?

A. Involved breaking.

Q. Wasn't it a fact that he paddled you that day because you had hit Henry Streeter with a board?

[322a] A. No; Henry Streeter was no way in that.

Q. Do you remember hitting Henry Streeter with a board and you two got into a fight?

A. No, we ain't never fought, not that I know of.

Q. You say that never happened?

A. I never fought with no Henry Streeter.

Q. Think again, Roosevelt; when this happened with the goggles and you were taken down to Mr. Wright's office, he didn't give you any licks at all for that, did he?

A. Yeah, because he sent James back to class. That was the same day he sent James back to that class.

Q. You say your father is Willie Everett. He's your stepfather, isn't he, Roosevelt?

A. He's my father.

Q. When he punishes you, what does he use; a belt or what?

Mr. FEINBERG. I object to the question on the same grounds I objected before.

The COURT. Sustained.

Mr. HOWARD. Your Honor, I respectfully submit we are supposed to be talking about cruel [322b] and unusual punishment. This is the theory of this case.

I have no further questions, Your Honor.

[Witness excused.]

* * * * *

(73–2078)

OCTOBER 3, 1972.

Re Policy and Regulation 5144, Corporal Punishment.

Mr. HOWARD:

POLICY

Third revision 8/5/70—2 pages.
Fourth revision 12/9/70—2 pages.
Fifth revision 11/3/71—1 page (currently in book).

REGULATION

Original adoption 11/3/71—2 pages (currently in book).

Re Policy and Regulation 5150, Control of Student Behavior.

POLICY

Original adoption 6/17/70 (currently in book).

REGULATION

Original adoption 8/5/70—3 pages.
First revision 12/9/70—3 pages (currently in book).

ELEMENTARY AND SECONDARY

Discipline/Punishment: Corporal Punishment

I. DISCIPLINE

Successful learning is contingent upon the self-discipline of the student as well as upon the group discipline which supports the learning climate.

Student infractions of rules and departures from good behavior should be studied, and corrective action should be taken as a result of identification of reasons for improper behavior before punishment is invoked. The only exception to this

logical process is in the case of erratic behavior of a student which may affect the safety of himself or others. At this point, it is necessary to act immediately and probe for causal reasons as soon as possible. A study of individual differences, conferences with the pupil and parent, and assistance from the principal, pupil personnel and other school resource specialists may aid the teacher in attempting to help a student correct behavior patterns which are retarding his development or interfering with the rights of others. The principal may also suggest seeking assistance from other resources in the school district offices or in the community.

A teacher or principal stands substantially in loco parentis with the child; that, coupled with the authority set forth in *Florida Statutes*, vests them with the power to establish rules for discipline, develop understandings for the enforcement of obedience, and, as a concomitant, power to enforce the classroom regulations.

II. PUNISHMENT: CORPORAL PUNISHMENT

Punishment in the general sense is the inflicting of a penalty for an offense. Corporal punishment is generally applied to the body of the offender or is physical punishment as opposed to other forms of punishment and is administered as a means of changing the behavior of the student. Therefore, it is important to analyze whether or not this goal will be accomplished by such action.

Corporal punishment may be used in the case where other means of seeking cooperation from the student have failed. If it appears that corporal punishment is likely to become necessary, the teacher must confer with the principal. The principal will determine the necessity for corporal punishment and designate the time, place, and the person to administer said punishment. In any case, the student should understand clearly the seriousness of the offense and the reason for the punishment. Care should be taken that the period of time between the offense and the punishment is not so long as to cause undue anxiety in the pupil. The punishment must be administered in kindness and in the presence of another adult, at a time and under conditions not calculated to hold the student up to ridicule or shame.

In the administering of corporal punishment, no instrument shall be used that will produce physical injury to the student, and no part of the body above the waist or below the knees may be struck. The person administering the corporal punishment must realize his own personal liabilities if the student being given corporal punishment is physically injured.

Corporal punishment should never be administered to a student whom school personnel know to be under psychological or medical treatment unless there has been a pre-conference with the school psychologist or the physician.

(See also Regulation 5150, Control of Student Behavior.)

Legal Reference: *Florida Statutes*, 231.09 (3), 232.25, 232.26 and 232.27.

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Discipline/Punishment: Corporal Punishment

I. DISCIPLINE

Successful learning is contingent upon the self-discipline of the student as well as upon the group discipline which supports the learning climate. Teachers and administrators have the authority and the responsibility to establish and maintain sound and effective discipline in the school.

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for discipline, develop understandings for the enforcement of obedience, and, as a concomitant, power to enforce the classroom regulations. Teachers and administrators have the right to use such means, including the moderate use of physical force or psysical contact, as may be necessary to maintain sound discipline and to enforce school order and rules, provided these means are not for the purposes of inflicting punishment. If physical force becomes necessary the means used will depend on the circumstances, including the nature of the misconduct of the student, the age of the student, and the physical and emotional condition of the student. Physical force must not be used maliciously or wantonly.

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(See also Regulation 5150, Control of Student Behavior.)

Legal Reference: Florida Statutes, 231.09(3), 232.25, 232.26, and 232.27.

ELEMENTARY AND SECONDARY

DISCIPLINE AND CORPORAL PUNISHMENT

Teachers and administrators have the authority and the responsibility to establish and maintain sound, effective discipline in the school. Successful learning is contingent upon the self-discipline of the student, as well as upon the group discipline which supports the learning climate.

The authority set forth in *Florida Statutes* vests teachers and administrators with the power to establish rules for discipline, develop understandings for the enforcement of obedience, and, as a corollary power, to enforce the classroom regulations. Teachers and administrators have the right to use such means, including the moderate use of physical force or physical contact, as may be necessary to maintain discipline and to enforce school order and rules. If physical force becomes necessary, the means used will depend upon the circumstances, including the nature of the misconduct of the student, the age of the student, and the physical and emotional condition of the student. Physical force must not be used maliciously or wantonly.

Punishment in the general sense is the inflicting of a penalty for an offense. Corporal punishment is generally applied to the body of the offender, or is physical punishment as opposed to other forms of punishment and is administered as a means of changing the behavior of the student. It is therefore important to analyze whether or not this goal will be accomplished by such action.

The Board directs that procedures for the administration of corporal punishment shall be developed by the superintendent to assist the principal in the implementation of this policy.

(See also Policy and Regulation 5150, Control of Student Behavior.)

Legal Reference: *Florida Statutes*, 231.09(3), 232.25, 232.26, 232.27.

ELEMENTARY AND SECONDARY

CORPORAL PUNISHMENT

This regulation is issued to assist district and school staff members in the implementation of the policy on discipline and corporal punishment.

Procedures for the administration of corporal punishment:

1. When corporal punishment becomes necessary, the teacher must consult each time with the principal, or his administrative designee, prior to its use. The principal may not authorize a teacher to administer corporal punishment at the teacher's discretion.

The principal, or his administrative designee, will in every case determine the necessity for corporal punishment, and in every case will designate the time, place, and the person to administer the punishment.

2. In every case of corporal punishment, the student is to be told of the seriousness of the offense and the reason for the punishment.

3. Care should be taken that the period of time between the offense, or the school's awareness of the offense, and the punishment itself is not excessive.

4. The punishment must be administered in the presence of another adult at a time and under conditions not calculated to hold the student up to ridicule or shame.

5. The punishment must be reasonable:

a. Corporal punishment for young children in the primary and intermediate grades shall be limited to a maximum of five strokes.

b. At the junior and senior high level no more than seven strokes are permitted.

c. The type of punishment, the severity of punishment, and the number of strokes administered when paddling a student must be individually determined in every case.

6. In administering corporal punishment, an instrument calculated to eliminate possible physical injury should be utilized. The instrument must be of wood and be no more

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than two feet long nor more than one-half inch thick and no more than four inches wide.

It should be smooth with no sharp edges or holes. A handle must be provide just large enough for a normal one-hand grip.

7. Under no circumstances shall a student be struck about the head or shoulders. The punishment shall be administered posteriorly; every effort should be made to avoid punishment above the waist or below the buttocks.

8. Corporal punishment should never be administered to a student known by school personnel to be under psychological or medical treatment unless there has been a pre-conference with the school psychologist or that student's physician.

9. In all cases where corporal punishment is administered to a student for the first time, the principal will diligently attempt to notify parents that corporal punishment has been administered. If personal contact, either by telephone or in person, cannot be made on the day of punishment, a written notification is to be sent by regular mail to the parents or guardian of the student.

10. The principal or each school shall maintain a log of all instances where corporal punishment is administered. This log will contain the name of the student, the date, the time, the number of strokes administered, the infraction of rules which caused the punishment, who administered the punishment, and the name of the adult witness.

JACKSON MEMORIAL HOSPITAL
EMERGENCY DEPARTMENT

JAMES INGRAHAM
1308 NW 62 Lane

COMPLAINT LOWER BACK — HOW, WHERE "BEATEN AT SCHOOL"

CLINICAL RECORD | DOCTOR'S ORDERS | CASHIER

73-2078

EXHIBIT #
VS
FILED IN EVIDENCE
JOSEPH E. BOGART, Clerk

ADMIT TO:
DIAGNOSIS:

ABLE TO WORK ☐ YES ☐ NO WHEN
FOLLOW-UP ☐ CLINIC ☐ PVT. PHYSICIAN ☐ SOCIAL SERVICE

CLINICAL RECORD (ORIGINAL)

JACKSON MEMORIAL HOSPITAL

James Ingraham

Rx NO. ___

CLINIC JMH - ER -

DATE 10/6/1970

REFILL ___

OUT PATIENT CLINIC

JACKSON MEMORIAL HOSPITAL

The above pt was seen here today - has a big gluteal abscess + hematoma + should be excused of school - P.E. until released (one week)

Or equivalent generic product

121.20-29 (2-58B)

[illegible] M. D.

NARCOTIC REGISTRATION NO. ___

Pet. EXHIBIT 5

vs

FILED IN EVIDENCE 10/16 1972

JOSEPH I. BOGART, Clerk

Case 71-23 [illegible]

JACKSON MEMORIAL HOSPITAL

EMERGENCY DEPARTMENT

DOCTOR'S NAME ___

DOCTOR CALLED AT ___

Rx NO. ___

CLINIC ___

DATE 10-9-70

REFILL ___

James Ingraham

OUT PATIENT CLINIC

JACKSON MEMORIAL HOSPITAL

The patient cannot attend school for at least 3 days. Had been treated at JMH.

Or equivalent generic product

121.20-29 (2-58B)

[illegible] M. D.

NARCOTIC REGISTRATION NO. ___

Pet. EXHIBIT 6

vs

FILED IN EVIDENCE 10-16 1972

JOSEPH [illegible]

Case 71-23 [illegible]

JACKSON MEMORIAL HOSPITAL
EMERGENCY DEPARTMENT

COMPENSATION VERIFIED ☐

DOCTOR'S NAME ____
DOCTOR CALLED AT ____ P.M.
PHONE ____

372070-2

NAME / ADDRESS: James Ingraham, 1308 NW 62 Lane

376157

HOSPITAL / INSURANCE: Grace

SEX: M COLOR: C

CO. RESIDENT: YES ☒ NO ☐

COMPLAINT: [illegible]

HOW, WHERE ____

NEAREST RELATIVE: [illegible] ADDRESS ____ PHONE ____

I HEREBY CONSENT TO THE ADMINISTRATION OF ANY ANESTHETIC (LOCAL OR GENERAL) OR OTHER SUCH OPERATIVE PROCEDURE AS MAY BE DEEMED ADVISABLE BY A PHYSICIAN IN JACKSON MEMORIAL HOSPITAL.

WITNESS: [illegible signature] SIGNATURE: [illegible signature]

CLINICAL RECORD

TIME: 32.49.90

DOCTOR'S NAME ____

DOCTOR'S ORDERS

OLD RECORD CALLED FOR: YES ☐ UNAVAILABLE ☐

[illegible handwritten clinical notes]

ADMIT TO: ____
DIAGNOSIS: ____

Pet. EXHIBIT 2
VS
FILED IN EVIDENCE
10-16 1972

ABLE TO WORK ☐ YES ☐ NO PRINT
FOLLOW-UP ☐ CLINIC ☐ PVT. PHYSICIAN ☐ SOCIAL SERVICE

CLINICAL RECORD (ORIGINAL)

7-3-7

JAMES E. SCOTT
Economic Opportunity Family Health Center, Inc.
TELEPHONE 836-4670 • 7200 N. W. 22nd AVENUE • MIAMI, FLORIDA 33147

PATIENT NO. ____

NAME James Ingraham AGE 14

ADDRESS ____ DATE 10-14-70

℞ The above patient was seen at our Center & treated for hematoma in buttock & low back. Still presently [illegible] [illegible] [illegible] Visit next at [illegible] [illegible] next 72 hrs

DO NOT REFILL
PLEASE LABEL AS SUCH
Generic Equiv. May Be Used Unless Checked ____ [signature] M.D.

REG. No. ____

ECONOMIC OPPORTUNITY FAMILY HEALTH CENTER, INC.

FAMILY HEALTH CENTER, INC.
FUNDED B. HEW/PUBLIC HEALTH SERVICE
7200 N. W. 22nd AVENUE
MIAMI, FLORIDA 33147

Please Reply To: Medical Director
~~5601 N.W. 56th Street~~
~~Miami, Florida 33142~~
~~Telephone: 635-7551~~

MEDICAL ABSTRACT

Name [illegible] James

ID.# [illegible]

Address [illegible]

Social Security #

Birthdate 8/3/56

Date of First Examination	Date of Last Examination
10/14/70	10/14/70

Height in.	Weight lbs.
Date:	

HISTORY AND PHYSICAL FINDINGS:

Patient seen on 10/14/70.

LABORATORY AND SPECIAL STUDIES:

Pet EXHIBIT 9
vs
FILED IN EVIDENCE
10/26 19 72
[illegible] BOGART, Clerk
Case 71-22[illegible]

DIAGNOSES:
1. trauma to buttocks
2.
3.

Abstract prepared by:

Signature [illegible]
Medical Director

[PLE]ASE RELATE [SIG]NIFICANT FINDINGS TO THE FAMILY [PRO]BLEM SHEET

	SIGNATURE
T. 98[illegible] Wt 165 BP 120/80	
10/14/70 [illegible]	
[illegible] buttocks [illegible]	
at JMH ..	
PE [illegible]	
[illegible]	
[illegible]: Trauma to buttock	
[illegible]	
[illegible]	[illegible]

InGratHam James
I.D. 848-12-04148

THE FAMILY HEALTH CENTER, INC.
MEDICAL PROGRESS RECORD

CLINICAL RECORD (ORIGINAL)

[Filed in evidence 10–16, 1972, Joseph I. Bogart, Clerk]

In the United States District Court in and for the Southern District of Florida

(Case No. 71–23–Civ–JE)

ELOISE INGRAHAM, ET AL., PLAINTIFFS

vs

WILLIE J. WRIGHT, ET AL., DEFENDANTS

Stipulation

The following Stipulation as to certain statistical facts is prepared pursuant to the Court's suggestion that an analysis, agreed to by the parties, of the information accumulated pursuant to Interrogatories answered by the Defendant SCHOOL BOARD, relating to the use of corporal punishment in the schools of Dade County would be more convenient and more meaningful than the introduction of the raw statistics.

This Stipulation is entered into with the understanding that the raw statistics upon which this analysis is based were supplied by individual school principals and not by the SCHOOL BOARD itself. Accordingly, the SCHOOL BOARD cannot vouch for the accuracy of the information other than to state that the information accumulated was produced pursuant to a request by the SCHOOL BOARD to each school in the Dade County School system.

By way of this Stipulation Defendants do not agree as to the materiality or admissibility of the statistics contained herein but only as to the statistical analysis of the raw information supplied to the SCHOOL BOARD by the various Principals of the Public Schools of Dade County. Assuming the information contained herein is admissible into evidence, Defendants do, by way of this Stipulation, waive any objection as to the possible hearsay character of the information contained in the

within Stipulation which objection might otherwise be sustained by the Court.

1. The total number of schools to which the SCHOOL BOARD Policy No. 5144 (discipline/punishment: Corporal punishment) is presently applicable and was applicable during the school year commencing September 1970 is approximately 231 (Two Hundred Thirty-One).

2. The total number of persons within the Dade County School System, other than school Principals, who administered corporal punishment but did not regularly and routinely confer with the Principal of the school in which they were employed during the school year commencing September 1970 was 59 (fifty-nine) prior to each paddling.

3. During the school year commencing September 1970 the total number of school personnel who administered paddlings in the Dade County School System other than Principals is 255 (Two Hundred Fifty-Five).

4. During the school year commencing September 1970 the total number of school personnel who conferred with their respective Principals before administering corporal punishment is 196 (One Hundred Ninety-Six).

5. During the school year commencing September 1970 the following schools in the Dade County School System did not administer corporal punishment as a matter of school policy:

(1) Miami Agricultural Vocational High School
(2) Miami Palmetto Senior High School
(3) Hialeah Lakes Senior High School
(4) Sunset Park Elementary School
(5) North Beach Elementary School
(6) North Miami Beach Senior High School
(7) South Dade Senior High School
(8) Norwood Elementary School
(9) G. T. Baker Vocational High School
(10) Miami Beach Senior High School

6. During the school year commencing September 1970 the following schools in the Dade County School System did not administer corporal punishment:

(1) Miami Central High School
(2) Rockway Elementary School
(3) Bethune Elementary School

7. During the school year commencing September 1970 the following schools administered by the Dade County School System did not administer corporal punishment during the school year commencing September 1970, however, it has not been determined whether this was a policy decision on the part of the school or whether the failure to administer corporal punishment was due to the fact that behavioral problems did not arise which resulted in paddlings:

(1) Cypress Elementary School
(2) Miami Lakes Elementary School
(3) Spring View Elementary School

8. The following schools in the Dade County School System during the school year commencing September 1970 administered corporal punishment in places other than the Principal's or Assistant Principal's office in the location indicated below:

(1) Comstock Elementary School—Physical Education Room.
(2) Junior High Opportunity Center—Boy's Bathroom.
(3) Floral Heights Elementary School—Physical Education area.
(4) Charles Drew Junior High School—Boy's Bathroom.
(5) Natural Bridge Elementary School—Book Room.
(6) Rainbow Park Elementary School—Clinic and in Visual Storage Room.
(7) Pine Villa Elementary School—Several Classrooms.
(8) Bunche Park Elementary School—Clinic
(9) Everglades Elementary School—Clinic
(10) Sunset Elementary School—Clinic

9. During the school year commencing September 1970 the following schools in the Dade County School System maintained at least one (1) paddle in the location indicated:

(1) Charles R. Drew Elementary School—Room 21
(2) G. W. Carver Junior High School—Shop—Physical Education Locker Rooms.
(3) Miami Jackson Senior High School—Room 127.
(4) Bunche Park Elementary School—Clinic.
(5) Everglades Elementary School—Clinic.

10. During the school year commencing September 1970 43 (forty-three) schools administered by the Dade County

School Board did not maintain records respecting the administration of corporal punishment.

11. During the school year commencing September 1970 18 (eighteen) schools in the Dade County School System did not routinely and usually inspect cumulative records of those students who received corporal punishment.

ALFRED FEINBERG,
Attorney for Plaintiffs, Legal Services of Greater Miami, Inc., 395 Northwest First Street, Suite 202, Miami, Florida 33128, Telephone—379-0822.

FRANK HOWARD,
Attorney for Defendants, Dade County Board of Public Instruction, 1410 N. E. Second Avenue, Miami, Florida.

By THOMAS SPICER

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail upon Frank Howard, Attorney for Defendant, Dade County Board of Public Instruction, c/o Thomas Spicer, 1410 N. E. Second Avenue, Miami, Florida, and Leland Stansell, Esquire, 10th Floor, Biscayne Building, 19 West Flagler Street, Miami, Florida 33130 this 10th day of October, 1972.

ALFRED FEINBERG,
Attorney for Plaintiffs.

73-2078
EXHIBIT #14
FILED IN EVIDENCE 10/18/72

United States District Court, Southern District of Florida

(Case Number 71–23–Civ–JE)

ELOISE INGRAHAM, ETC., ET AL., PLAINTIFFS

v.

WILLIE J. WRIGHT, ETC., ET AL., DEFENDANTS

Order of Dismissal as to Count One and Count Two of Plaintiffs' Complaint

THIS CAUSE was tried before the Court, without a jury upon Count Three of Plaintiffs' complaint. Count Three, a class action, seeks injunctive and declaratory relief to prohibit corporal punishment throughout the Dade County school system. At the close of the Plaintiffs' case the Defendants moved for dismissal. Counsel for the parties then agreed that the evidence offered by Plaintiffs to support Count Three would also be considered by the Court, as if upon motion for directed verdict, as having been offered on Counts One and Two, provided that certain additional testimony desired by Plaintiffs' counsel were placed in the record by deposition or stipulation.[1] The additional testimony has been summarized in a stipulation filed, which reflects that such testimony, taken together with all of the evidence introduced at trial upon the Third Count, constitutes all of the evidence which plaintiffs would offer before a jury in their case in chief to support the First and Second Counts.

Therefore, before the Court is what amounts to defendants' motion for directed verdict as to counts One and Two. The issue now before the Court is whether the evidence, viewed most favorably to plaintiffs is sufficient to permit a jury to

[1] It was also understood that such agreed procedure would not waive defendants' right to a jury trial if the motion were denied.

return a verdict for plaintiffs on either or both of the First and Second Counts.

Counts One and Two of the complaint are "civil rights" actions brought by two junior high school students, Ingraham and Andrews, against a school principal and two assistant principals in the same school. The damages sought are for personal injuries sustained by the students as a result of corporal punishment having been administered by the individual defendants. The plaintiffs allege jurisdiction based upon 28 U.S.C. § 1331 and 1343 and 42 U.S.C. § 1981–1988.

By separate order, the Court has dismissed the Third Count. In dismissing the Third Count, the Court has ruled, with respect to the school system as a whole, that corporal punishment of students, either in and of itself, or as authorized by the Dade County School Board's policy and regulation, or as administered generally in the school system, does not violate any constitutional rights possessed by the class composed of all students in the system. That ruling precludes the individual plaintiffs from recovery in their actions for damages on any of the theories advanced, unless upon the evidence concerning the particular punishment given to them by the individual defendants, the law would permit a jury to find that the punishments were of such nature and of such severity as to constitute "cruel and unusual punishment", in the constitutional sense, as prohibited by the Eighth Amendment.

Corporal punishment might be meted out under circumstances and with such severity as to amount to a deprivation of a constitutional right and thus give rise to recovery in a "civil rights" case.

Plaintiff Ingraham's case rests on one instance of punishment, during which he received 20 licks with a wooden paddle, which produced a painful and serious hematoma on his buttocks. Plaintiff Andrews was paddled several times, receiving no more than 5 licks on any one occasion. The paddlings caused painful bruises on Andrews' buttocks.

The undisputed facts regarding Ingraham and Andrews cannot demonstrate the elements of severity, arbitrary infliction, unacceptability in terms of contemporary standards, or gross disproportion which are necessary to bring "punishment" to the constitutional level of "cruel and unusual punishment". Therefore, a jury could not lawfully find that either of these

216-455 O - 78 - 10

plaintiffs sustained a deprivation of rights under the Eighth Amendment.

As recited, the evidence concerning the administration of corporal punishment to Plaintiffs Ingraham and Andrews and the results of that punishment were presented before the trial judge on Count Three of Plaintiffs' complaint. It was later agreed that the evidence so presented would be the evidence presented to a jury should a jury be impanelled to try Counts One and Two. Had the Court undertaken to try Counts One and Two before a jury and then found itself in position of granting a directed verdict on plaintiffs' civil rights claims, under the theory of pendente jurisdiction the Court would have submitted to that jury the question of whether or not these plaintiffs have suffered damages as a result of torts committed against them by defendants. But pendente jurisdiction is to be exercised in the discretion of the Court depending upon the circumstances of each case. Were this Court to set about now to try assault and battery cases or cases regarding whether or not the defendants corporally punished the plaintiffs without authority to do so, no judicial time would be conserved and this Court would be trying a matter which lies within the authority of the state courts.

Accordingly, the Defendants' motion now before the Court is granted, and it is thereupon

ORDERED and ADJUDGED that the First and Second Counts in the Plaintiffs' complaint are hereby dismissed.

DONE and ORDERED at Miami, in the Southern District of Florida, this 23rd day of February, 1973.

JOE EATON,
United States District Judge.

United States District Court, Southern District of Florida

(Case No. 71–23–CIV–JE)

ELOISE INGRAHAM, ET AL., PLAINTIFFS

vs.

WILLIE J. WRIGHT, ET AL., DEFENDANTS

Order of Dismissal as to Count Three of Plaintiffs' Complaint

THIS CAUSE is before the Court on motion of the Defendants for dismissal of the Third Count of Plaintiffs' Complaint,

made pursuant to Rule 41(b) after the completion of the presentation of the Plaintiffs' evidence at trial without a jury.

The Third Count in the complaint is a class action filed on behalf of all students in the Dade County public school system, seeking injunctive and declaratory relief abolishing the use of corporal punishment by school officials throughout the school system. Plaintiffs urge that any form of corporal punishment in the public schools is *per se* unconstitutional, and that the defendant School Board's policy which authorizes and regulates the use of corporal punishment is unconstitutional on its face, and as applied throughout the system.

Plaintiffs allege that the infliction of corporal punishment by public school officials on students abridges the "privileges and immunities" of the students. As in the case of *Sims* v. *Board of Education of Independent School District No. 22*, 329 F. Supp. 678 (D. New Mexico, 1971), where a school district's policy and practice of corporal punishment was unsuccessfully challenged, the complaint does not particularize "privileges" and "immunities". It utilizes the language of the complaint in *Sims* that corporal punishment abridges students' "rights to physical integrity," "dignity of personality", and "freedom from arbitrary authority." Such allegations characterize what are generally known as invasions of the right of privacy.

Plaintiffs further allege that infliction of corporal punishment deprives students of "liberty without due process of law" in violation of the Fourteenth Amendment of the Constitution of the United States in that it is administered arbitrarily and capriciously inflicted and is unrelated to the achieving of any legitimate educational pupose. Further, Plaintiffs stress that the infliction of corporal punishment on public school students constitutes such "cruel and unusual punishment" as is prohibited by the Eighth Amendment. As in *Sims*, Plaintiffs stress that corporal punishment subjects the student to humiliation and that the "psychological harm done plaintiffs and the other members of the class by the infliction of corporal punishment is substantial and lasting."

As the basis for federal jurisdiction, the Plaintiffs rely upon the provisions of 28 U.S.C. Sections 1331 and 1343, and of 42 U.S.C. Sections 1981–1988, which considered together authorize relief only upon proof of the deprivation, under color of state

law or authority, of any right, privilege or immunity secured by the Constitution or laws of the United States.

After consideration of the evidence and extensive argument of counsel, the Court makes the findings of facts and conclusions of law that follow.

FINDINGS OF FACT

1. The Dade County public school system is the sixth largest in the nation, with approximately 12,500 teachers and administrative personnel operating 237 schools with a total student population in excess of 242,000.

2. Corporal punishment is one of a variety of measures employed in the school system for the correction of pupil behavior and the preservation of order. Other alternative measures in use range from parent and student conferences, the use of guidance counselors and psychologists, where available, to suspension and expulsion. Corporal punishment is not utilized at all in sixteen schools in Dade County.

3. Statutory authority for the use of corporal punishment in Florida is found in Florida Statutes, § 232.27, which deals with the duties of teachers in the control of pupils, but provides that a teacher "* * * shall not inflict corporal punishment before consulting the principal or teacher in charge of the school. * * *" The Defendant School Board's policy as it existed when this suit was filed is more restrictive. It requires the principal to determine the necessity for corporal punishment, and to designate the time, place and person to administer the punishment, and in other ways limits the circumstances in which the punishment may be used. The policy was revised in November, 1971, and supplemented with detailed regulations, which prescribe additional limitations upon the nature, extent and circumstances of permissible punishment.

4. There is no published schedule of infractions for which corporal punishment is authorized, nor any formal procedural requirements which must be observed before punishment may be administered.

5. There has been a rather widespread failure to adhere to School Board policy regarding corporal punishment. Teachers have punished students without first consulting with their respective principals. More blows have been administered to students than authorized by the policy. Teachers have administered corporal punishment with only the student or students present. With the exception of a few cases, the punishments administered have been unremarkable in physical severity.

The instances of punishment which could be characterized as severe, accepting the students' testimony as credible, took place in one junior high school.

DISCUSSION

Plaintiffs rely heavily upon the rationale of *Jackson* v. *Bishop*, 404 F. 2d 571 (8th Cir., 1968). They say that no rule or regulation as to the use of the paddle, however seriously or sincerely conceived and drawn, will successfully prevent teachers' abuse of students. *Jackson* is distinguishable from the case before this Court. In *Jackson* the superintendent of the Arkansas State Penitentiary and all personnel of the penitentiary system were restrained from inflicting corporal punishment, including the use of the strap, as a disciplinary measure. *Jackson* held "that the use of the strap upon prisoners offended contemporary concepts of decency and human dignity" and that "public opinion is obviously adverse" to the use of the strap upon prisoners. It has not been shown in the case before this Court that the use of the paddle in the public schools "offends *contemporary concepts* of decency, and human dignity." Neither has it been shown that public opinion is "obviously adverse" to the use of the paddle.

The Court in *Jackson* found that the use of the strap in prisons was unusual. This record discloses that the use of the paddle in public schools throughout the country is "usual."

A Three Judge Court sitting in the Northern District of Georgia, Newnan Division, in the case of *Whatley* v. *Pike County Board of Education*, Civil Action No. 977, Sept. 22, 1971 [Unreported], distinguished *Jackson* from the case before the Three Judge Court. The Three Judge panel pointed out the large number of states which condone the moderate use of corporal punishment, and the universal abolition of whipping in the penitentiaries—where such punishment offends the public conscience. The Court, in *Whatley*, held flatly that the infliction of corporal punishment upon deserving pupils offends no notion of cruel and unusual punishment as the terms are constitutionally construed.

In *Ware* v. *Estes*, 328 F. Supp. 657, (N.D. Texas, 1971) *aff'd per curiam*, 458 F. 2d 1360 (5th Cir., 1972) the plaintiffs charged that any corporal punishment administered without parental or student consent deprived them of due process because any utilization of corporal punishment is arbitrary capricious and unrelated to any legitimate purpose. Plaintiffs in *Ware*, also charged that corporal punishment constitutes cruel and unusual punishment. District Judge Tayor, after having heard the evidence, had no doubt that the practice of corporal punishment had been abused by some of the seven thousand odd teachers in the Dallas Independent School District.[1] From the evidence presented before this Court, there is no doubt that the practice of corporal punishment has been abused by some of the teachers in the Dade County school system.

The fact that corporal punishment, inflicted in some of the schools in Dade County, may be harsh, oppressive and of doubtful propriety, does not, under the law, demonstrate constitutional invalidity. The Courts are the guardians of the liberties of the people against deprivations of constitutional rights. The Courts have no right to determine the expediency, necessity, wisdom, utility or propriety of official conduct so long as constitutional principles are not violated. It is not within this Court's authority to pass judgment upon the merits of corporal punishment as an educational tool or a means of discipline. The Floida legislature and the Dade County School Board have the authority and the duty to decide whether or not corporal punishment should continue in the schools of Dade County and of Florida. It is the duty of the Courts not to usurp the authority vested in the legislative executive branches of government.

After having heard the testimony in this case, this Court believes that corporal punishment may be administered in such a way that the resultant psychological harm to some students will be substantial and lasting. Sixteen principals in the Dade County School system reject the idea that order is better maintained and the learning process enhanced by the use of the board upon the body of the dominated. Nevertheless, as expressed by Mr. Chief Justice Burger, concurring in *Palmer* v. *Thompson*, 403 U.S. 217, 91 S. Ct. 1940, 29 L. Ed. 2d 438, a case not otherwise in point, "All that is good is not commanded by the Constitution and all that is bad is not forbidden by it."

[1] In his opinion Judge Taylor pointed out that one of the plaintiffs in that case had been knocked unconscious by an assistant principal. The assistant principal was suspended from his duties for several months and at the time of the writing of the opinion, was facing criminal charges for assault upon a minor.

CONCLUSION OF LAW

1. The Court has jurisdiction in the cause.

2. Corporal punishment of public school students, neither in and of itself, nor as prescribed and regulated in the Dade County School Board's policy and regulation, nor as administered in the school system, constitutes "cruel and unusual punishment" within the intent of the Eighth Amendment to the Constitution. Considering the system as a whole, there is no showing of severe punishment degrading to human dignity, nor of the arbitrary infliction of severe punishment, nor of the unacceptability to contemporary society of corporal punishment in the schools, nor of excessive or disproportionately severe punishment.

3. Corporal punishment of public school students, neither in and of itself, nor as prescribed and regulated in the Dade County School Board's policy and regulation, nor as administered in the school system, constitutes a deprivation of "liberty without due process of law" in violation of the Fourteenth Amendment to the Constitution. The evidence has not shown that corporal punishment in concept, or as authorized by the School Board, or as applied throughout the school system, is arbitrary, capricious, unreasonable or wholly unrelated to the legitimate state purpose of determining its educational policy. Consideration of what procedural due process may require under any given set of circumstances must begin with the determination of the precise nature of the governmental function involved. Neither a formal code of offenses, nor formal procedural steps such as notice, hearing and representation of counsel have been required by the law as constitutional preludes to corporal punishment of students.

The concept of due process is premised upon fairness and reasonableness in light of the totality of the circumstances then existing. The due process limitation does not unduly confine officials who have the responsibility of governing. Whether the constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors.

It seems to this Court that if there is any good purpose to be served by corporal punishment in the schools, such purpose would be long since passed if formal notice and hearing were required before a paddling. There has been no deprivation of "due process."

4. The other constitutional claims alleged by the plaintiffs are without merit. The use of corporal punishment by school authorities does not abridge any privileges or immunities guaranteed to students by the Constitution of the United States.

Accordingly, the defendants' motion for dismissal is granted, and it is thereupon

ORDERED and ADJUDGED that the Third Count of Plaintiffs' complaint is dismissed.

DONE and ORDERED at Miami, in the Southern District of Florida this 23rd day of February, 1973.

JOE EATON,
United States District Judge.

In the United States District Court in and for the Southern District of Florida

(Case No. 71–23–Civ–JE)

ELOISE INGRAHAM, ET AL., PLAINTIFFS

v.

WILLIE J. WRIGHT, I, ET AL., DEFENDANTS

Notice of Appeal

Notice is hereby given that ELOISE INGRAHAM, as next friend and Mother of JAMES INGRAHAM, a minor, and WILLIE EVERETT, as next friend and Father of ROOSEVELT ANDREWS, a minor, on behalf of themselves and all others similarly situated, Plaintiffs above named, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the Order Dismissing the First and Second Causes of Action and from the Order Dismissing the Third Cause of Action entered in this cause on or about the 23rd day of February 1973.

ALFRED FEINBERG,
Attorney for Plaintiffs, Legal Services of Greater Miami, Inc., 395 Northwest First Street, Suite 202, Miami, Florida 33128.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail upon Frank Howard, Attorney At Law, Dade County Board of Public Instruction, 1410 N. E. Second Avenue, Miami, Florida and Leland Stansell, Attorney At Law, 10th Floor Biscayne Building, 19 West Flagler Street, Miami, Florida 33130 this 8 day of March, 1973.

ALFRED FEINBERG,
Attorney for Plaintiffs.

ORIGINAL PANEL POSITION

United States Court of Appeals, Fifth Circuit

No. 73–2078.

ELOISE INGRAHAM, AS NEXT FRIEND, ETC., ET AL., PLAINTIFFS-APPELLANTS

v.

WILLIE J. WRIGHT, I, INDIVIDUALLY, ETC., ET AL., DEFENDANTS-APPELLEES

July 29, 1974

Appeal from the United States District Court for the Southern District of Florida

Before RIVES, WISDOM and MORGAN, Circuit Judges

RIVES, Senior Circuit Judge:

More than a century ago, a member of the Supreme Court of Indiana made the following observation:

> The husband can no longer moderately chastise his wife; nor, according to the more recent authorities, the master his servant or apprentice. Even the degrading cruelties of the naval service have been arrested. Why the person of the schoolboy, "with his shining morning face," should be less sacred in the eye of the law than that of the apprentice or the sailor, is not easily explained.

Cooper v. McJunkin, 1853 (4 Ind. (Porter) 290 (Stuart, J.). In the present case, we consider constitutional issues related to corporal punishment in the public school system of Dade County, Florida.

Plaintiffs filed on January 7, 1971, a complaint containing three counts. Counts One and Two were individual actions for compensatory and punitive damages brought by two junior high school students under 42 U.S.C. §§ 1981–1988, with jurisdiction claimed under 28 U.S.C. § 1331 and § 1343. The students claimed personal injuries resulting from corporal punishment administered by certain defendants in alleged violation of their constitutional rights. Count Three of the complaint was a class action, also brought under 42 U.S.C. §§ 1981–1988, with jurisdiction claimed under 28 U.S.C. § 1331 and § 1343. This class action filed on behalf of all students in the public school system of Dade County sought injunctive and declaratory relief against the use of corporal punishment throughout the county school system.

The plaintiffs presented their evidence on Count Three of the complaint in a week long trial before the district court without a jury. Those who testified included sixteen students or former students, several parents and other relatives of students, a professor of educational psychology, and a number of school teachers and administrators, including the defendant Superintendent Edward Whigham.The evidence also included a photograph, stipulations, answers to interrogatories, school records and medical reports. At the close of the plaintiffs' case, the defendants moved for dismissal under Rule 41(b), F.R. Civ. P., which in relevant part provides:

> After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

The district court noted in its order that counsel for the parties then agreed that the evidence offered to support Count Three "would also be considered by the Court, as if upon motion for directed verdict, as having been offered on Counts One and Two, provided that certain additional testimony desired by plaintiffs' counsel were placed in the record by deposition or stipulation." Thus, this case really involves one equity case, styled Count Three, and two law cases, styled Counts One and Two. The additional testimony was summarized in a stipulation. On February 23, 1973, the district court first dismissed Count Three of the complaint, and then concluded that a jury could not lawfully find that either of the plaintiffs in Counts One and Two sustained a deprivation of constitutional rights.

We hold that the district court erred in dismissing each of the three counts of plaintiffs' complaint, and, therefore, reverse and remand for further proceedings.

I

Jurisdictional Issues

A. Defendants assert that there is no federal jurisdiction over Count Three under 42 U.S.C. §§ 1981–1988 and 28 U.S.C. § 1331 and § 1343, because the Dade County School Board and the Superintendent of Schools in their official capacities are not "persons" amenable to civil rights actions. In support of this claim defendants cite *City of Kenosha* v. *Bruno*, 1973, 412 U.S. 507, 93 S. Ct. 2222, 37 L. Ed. 2d 109. In *City of Kenosha*, the Supreme Court held that two municipalities in Wisconsin were not "persons" within the meaning of 42 U.S.C. § 1983. In *Campbell* v. *Masur*, 5 Cir. 1973, 486 F. 2d 554, where a plaintiff sued a school superintendent and a school board in their official capacities only, the court sent the case back to the district court for re-examination and further consideration in light of *City of Kenosha*.[1]

[1] Plaintiff sued a school superintendent and a school board in their official capacities only, the court sent the case back to the district court for re-examination and further consideration in light of *City of Kenosha*.[1]

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[1] Also see *Cheramie* v. *Tucker*, 5 Cir. 1974, 498 F. 2d 586, 587, where this Court held that various arms of the state government of Louisiana, such as the Department of Highways, are not persons within the meaning of 42 U.S.C. § 1983.

[1] Plaintiffs have sued Superintendent of Schools Edward L. Whigham in his individual capacity, as well as in his official capacity.[2] It is clear that the school superintendent, sued as an individual, is a "person" within the meaning of § 1983. *Sterzing* v. *Fort Bend Independent School District*, 5 Cir. 1974, 496 F. 2d 92, p. 93, n. 2; *United Farmworkers of Florida Housing Project, Inc.* v. *City of Delray Beach*, 5 Cir. 1974, 493 F. 2d 799. To hold otherwise would suggest the impossibility of suing any government official or employee under § 1983. *City of Kenosha, supra*, does not require or even intimate the possibility of such a result. The right to bring a § 1983 action against a state or local official is well established. See *Monroe* v. *Pape*, 1961, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492, and its progeny. Also see *Moor* v. *County of Alameda*, 1973, 411 U.S. 693, 700, 93 S. Ct. 1785, 36 L. Ed. 2d 596.

[2] Prior to the decision in *City of Kenosha*, a number of courts had held that cities were proper defendants under § 1983 where equitable relief was sought. See discussion in *City of Kenosha* v. *Bruno, supra*, 412 U.S. at 512–514, and at 516ff, 93 S. Ct. 2222 (Douglas, J., dissenting in part). The complaint in the present case, and all of the proceedings in the district court, occurred before *City of Kenosha* was decided. Taking these factors into consideration, the district court should on remand grant the likely request of plaintiffs to add the individual members of the Dade County School Board as parties defendant under Count Three of the complaint. Without regard to whether the plaintiffs may ultimately be entitled to any equitable relief against the School Board or its members, fairness and efficient judicial administration justify the addition of the individual school board members as parties insofar as the plaintiffs seek declaratory and equitable relief restraining the School Board from authorizing or implementing corporal punishment in Dade County. See Rule 21, F.R. Civ. P.; *Mullaney* v. *Anderson*, 1952, 342 U.S. 415, 72 S. Ct. 428, 96 L. Ed. 458; *United States* v. *Louisiana*, 1957, 354 U.S. 515, 77 S. Ct. 1373, 1 L. Ed. 2d 1525; *Halladay* v. *Verschoor*, 8 Cir. 1967, 381 F. 2d 100; *Rakes* v. *Coleman*, E.D. Va. 1970, 318 F. Supp. 181; 3A Moore ¶ 31.05[1].

[2] Willie J. Wright, I (a principal), Lemmie Delliford (an assistant principal) and Solomon Barnes (an assistant to a principal) have each also been sued in his official and individual capacity.

[3–5] B. Although not argued by the parties on this appeal, it is appropriate to examine whether Count Three of the instant case should have been heard by a three-judge district court.[3] Though neither party requested a three-judge district court, consent, either implied or express, cannot authorize a single judge to hear a case that falls within the terms of 28 U.S.C. § 2281. *Sands* v. *Wainwright*, 5 Cir. 1973, 491 F. 2d 417, 424 (en banc); *Borden Co.* v. *Liddy*, 8 Cir. 1962, 309 F. 2d 871; *Americans United for Sep. of Church & State* v. *Paire*, 1 Cir. 1973, 475 F. 2d 462. The district court in the present case considered the question and ruled that a three-judge district court was not required. We agree.

Plaintiffs sought injunctive relief restraining the defendants, their agents and employees from inflicting any form of corporal punishment upon students in the Dade County public school system.[4] Plaintiffs did not request an injunction restraining the enforcement of any specific Florida statute, and in oral argument before this Court, counsel for plaintiffs stated, "We are not challenging the constitutionality of the Florida statute." Section 232.27 of Florida Statutes Annotated, provides:

> Each teacher or other member of the staff of any school shall assume such authority for the control of the pupils as may be assigned to him by the principal and shall keep good order in the classroom and in other places in which he is assigned to be in charge of pupils, but he shall not inflict corporal punishment before consulting the principal or teacher in charge of the school, and in no case shall such punishment be degrading or unduly severe in its nature.

The injunctive relief sought by plaintiffs would not conflict with this provision, and would not extend beyond Dade County. By establishing limits upon the administration of

[3] Counts One and Two, which are individual actions for damages, clearly do not require a three-judge district court. Therefore, if it were determined that a three-judge court is necessary to decide Count Three, we would still be obliged to consider most or all of the underlying facts in this case in order to review the district court's disposition of Counts One and Two.

[4] Plaintiffs' request for injunctive relief restraining the defendants from administering corporal punishment in Charles R. Drew Junior High School is obviously included within the larger request for injunctive relief throughout the entire county system.

corporal punishment, the statute inferentially permits local school boards to authorize such punishment. This statute does not mandate or require corporal punishment, however, nor does it compel local school boards to adopt regulations providing for corporal punishment. In fact, the statute would not prevent a local board from prohibiting corporal punishment in certain grade levels or throughout a county system.

> The Dade County School Board adopted a policy which affirmatively authorized the use of corporal punishment in Dade County schols. It is the implementation of this policy, and the practices which have developed in Dade County under the authority of this policy, particularly in one junior high school, which the plaintiffs seek to enjoin. Although a regulation authorizing corporal punishment is consistent with F.S. 232.27, F.S.A. an injunction restraining the named defendants, their agents and employees from the use of corporal punishment would not require the invalidation of the Florida statute, and would not directly affect any county in Florida other than Dade County. Count Three, therefore, comes within the rule that where a challenged regulation or policy is of only local import, a single judge must hear the case. *Board of Regents of University of Texas System* v. *New Left Education Project*, 1972, 404 U.S. 541, 92 S. Ct. 652, 30 L. Ed. 2d 697; *Moody* v. *Flowers*, 1967, 387 U.S. 97, 87 S. Ct. 1544, 18 L. Ed. 2d 643; *Griffin* v. *School Board of Prince Edward County*, 1964, 377 U.S. 218, 327, 328, 84 S. Ct. 1226, 12 L. Ed. 2d 256; *Rorick* v. *Board of Commissioners*, 1939, 307 U.S. 208, 59 S. Ct. 808, 83 L. Ed. 1242; Ex parte Public National Bank, 1928, 278 U.S. 101, 49 S. Ct. 43, 73 L. Ed. 202; Ex parte Collins, 1928, 277 U.S. 565, 48 S. Ct. 585, 72 L. Ed. 990; *Sands* v. *Wainwright*, 5 Cir. 1973, 491 F. 2d 417 (en banc).

II

The Facts

As to the district court's findings or treatment of facts, appellate review is governed by one rule applicable to Count

Three and by a different rule applicable to Counts One and Two. We have heretofore indicated that there were two separate orders of dismissal. Count Three was dismissed under Rule 41(b), F.R. Civ. P. "on the ground that upon the facts and the law the plaintiff has shown no right to relief." As authorized by that rule, the district court in effect rendered judgment on the merits against the plaintiffs and made findings as provided in Rule 52(a). See *Emerson Electric Co.* v. *Farmer*, 5 Cir. 1970, 427 F. 2d 1082, 1086; Wright & Miller, Federal Practice & Procedure § 2371; Moore's Federal Practice ¶ 41.13[4]. The district court's order of dismissal as to Counts One and Two correctly recognized that, "The issue now before the Court is whether the evidence, viewed most favorably to plaintiffs is sufficient to pemit a jury to return a verdict for plaintiffs on either or both of the First and Second Counts." On that issue, our review of the sufficiency of the evidence is governed by the familiar rule enunciated in *Boeing Company* v. *Shipman*, 5 Cir. 1969, 411 F. 2d 365, 374–375.

In its order of dismissal as to Count Three, the district court listed its "Findings of Fact" as follows:

> 1. The Dade County public school system is the sixth largest in the nation, with approximately 12,500 teachers and administrative personnel operating 237 schools with a total student population in excess of 242,000.
>
> 2. Corporal punishment is one of a variety of measures employed in the school system for the correction of pupil behavior and the preservation of order. Other alternative measures in use range from parent and student conferences, the use of guidance counselors and psychologists, where available, to suspension and expulsion. Corporal punishment is not utilized at all in sixteen schools in Dade County.
>
> 3. Statutory authority for the use of corporal punishment in Florida is found in Florida Statutes, § 232.27, which deals with the duties of teachers in the control of pupils, but provides that a teacher " * * * shall not inflict corporal punishment before consulting the principal or teacher in charge of the school * * *." The Defendant School Board's policy

as it existed when this suit was filed is more restrictive. It requires the principal to determine the necessity for corporal punishment, and to designate the time, place and person to administer the punishment, and in other ways limits the circumstances in which the punishment may be used. The policy was revised in November, 1971, and supplemented with detailed regulations, which prescribe additional limitations upon the nature, extent and circumstances of permissible punishment.

4. There is no published schedule of infractions for which corporal punishment is authorized, nor any formal procedural requirements which must be observed before punishment may be administered.

5. There has been a rather widespread failure to adhere to School Board policy regarding corporal punishment. Teachers have punished students without first consulting with their respective principals. More blows have been administered to students than authorized by the policy. Teachers have administered corporal punishment with only the student or students present. With the exception of a few cases, the punishments administered have been unremarkable in physical severity.

The instances of punishment which could be characterized as severe, accepting the students' testimony as credible, took place in one junior high school.

We agree with and accept the expressed findings of the district court. However, those findings are somewhat meager considering the voluminous evidence presented in this case, and it is therefore appropriate for us to detail more fully what the testimony and other evidence reveals.

Dade County School Board Policy 5144 expressly authorizes the use of corporal punishment, and prescribes the procedures to be followed where a teacher feels that corporal punishment is necessary.[5] During the 1970–71 school year,

[5] During the 1970–71 school year, Policy 5144 provided in relevant part as follows:

"II. Punishment: Corporal Punishment "Punishment in the general sense is the inflicting of a penalty for an offense. Corporal punishment is generally applied to the body of the offender or is physical punishment as opposed to other forms of punishment and is administered as a means of changing the behavior of the student. Therefore, it is important to analyze whether or not this goal will be accomplished by such action.

"Corporal punishment may be used in the case where other means of seeking cooperation from the student have failed. If it appears that corporal punishment is likely to become necessary, the teacher must confer with the principal. The principal will determine the necessity for corporal punishment and designate the time, place, and the person to administer said punishment. In any case, the student should understand clearly the seriousness of the offense and the reason for the punishment. Care should be taken that the period of time between the offense and the punishment is not so long as to cause undue anxiety in the pupil. The punishment must be administered in kindness and in the presence of another adult, at a time and under conditions not calculated to hold the student up to ridicule or shame.

"In the administering of corporal punishment, no instrument shall be used that will produce physical injury to the student, and no part of the body above the waist or below the knees may be struck. The person administering the corporal punishment must realize his own personal liabilities if the student being given corporal punishment is physically injured.

"Corporal punishment should never be administered to a student whom school personnel know to be under psychological or medical treatment unless there has been a pre-conference with the school psychologist or the physician."

On November 3, 1971, almost ten months after this action was filed, Policy 5144 was extensively revised. As indicated by the district court, this revision included "detailed regulations, which prescribe additional limitations upon the nature, extent and circumstances of permissible punishment."

[6] We recognize that the term "paddling" is a word of art. Plaintiffs in their brief refer to "beating." Similarly, the punishment is described in terms of "licks" and "blows," and the instruments of punishment are referred to as "paddles" and "boards."

[7] Paddle size was not prescribed during 1970–71. Most paddles probably were within the range indicated by the November 3, 1971 revision of Policy 5144: "The instrument must be of wood and be no more than two feet long nor more than one-half inch thick and no more than four inches wide."

Policy 5144 provided among other things, that the punishment be administered "in kindness and in the presence of another adult" and that "no instrument shall be used that will produce physical injury to the student, and no part of the body above the waist or below the knees may be struck."

The evidence shows that corporal punishment in Dade County during the relevant period consisted primarily, if not entirely, of "paddling."[6] Paddling involves striking the student with a flat wooden instrument[7] usually on the buttocks. The district court recognized that the evidence revealed "a rather widespread failure to adhere to School

Board policy regarding corporal punishment." Many of the student witnesses gave testimony which indicated that their teachers in various schools did not always consult with the principal of the school before administering corporal punishment. A number of non-principals admitted in their answers to interrogations that they did not "regularly and routinely" confer with the principal before paddling students.[8] Student testimony also indicated, and the district court found, that teachers sometimes administered corporal punishment with only the student or students present, whereas school board policy required the presence of another adult during the administration of corporal punishment.

In at least 16 of the 231 Dade County schools, corporal punishment was not utilized in the 1970–71 school year.[9] The evidence suggests that in most of those schools which did use corporal punishment, the punishment was normally limited to one or two licks, or sometimes as many as five, with no apparent physical injury to the children who were punished. Quoting from the district court's findings of fact, "The instances of punishment which could be characterized as severe * * * took place in one junior high school." This school was Charles R. Drew Junior High School, and the occurrences there merit description.

The experiences of individual students at Drew reveal the nature of the system of corporal punishment utilized at this educational institution. On October 6, 1970, a number of students, including fourteen-year-old James Ingraham, a named plaintiff, were slow in leaving the stage of the school auditorium when asked to do so by a teacher. A number of boys and girls involved in this incident were taken to the principal's office and paddled. James protested,

[8] By stipulation dated October 10, 1971, the parties agreed that, "The total number of persons with the Dade County School System, other than school principals, who administered corporal punishment but did not regularly and routinely confer with the principal of the school in which they were employed during the school year commencing September 1970 was 59 (fifty-nine) prior to each paddling." (R. 1435) This stipulation was based on questionnaires prepared by the plaintiffs and completed by school officials and employees.

[9] At least 10 of these schools did not administer corporal punishment as a matter of school policy. See stipulation of October 10, 1972. Also see district court finding 2.

claiming he was innocent, and refused to be paddled. Willie J. Wright, I, the principal called for the assistance of Lemmie Deliford, the assistant principal in charge of administration, and Solomon Barnes, an assistant to the principal. Barnes and Deliford held James by his arms and legs and placed him, struggling, face down across a table. Wright administered at least twenty licks.[10] After the paddling, Wright told James to wait outside his office—"he said if I move he was going to bust me on the side of my head"—(Tr. 144), but James went home anyway.

At home, James examined his injuries; according to him, his backside was "black and purple and it was tight and hot." (Tr. 146) James' mother took him to a local hospital. The examining doctor diagnosed the cause of James' pain to be a "hematoma." "The area of pain was tender and large in size, and * * * the temperature of the skin area of the hematoma was above normal which is a sign of inflammation often associated with hematoma." [11] The doctor prescribed pain pills, a laxative, sleeping pills and ice packs, and advised James to stay at home for at least a week (Tr. 148). A different doctor examined James on October 9, when he returned to the hospital for treatment, and on October 14. This doctor described James' injury as follows: "The patient's subjective [sic] signs of injury included a hematoma approximately six inches in diameter which was swollen, tender and purplish in color. Additionally, there was serousness or fluid oozing from the hematoma." [12] On October 14, eight days after the paddling, this doctor indicated that James should rest at home "for next 72 hours." [13] James testified that it was painful even to lie on his back in the days following the padding, and that he could not sit comfortably for about three weeks (Tr. 149).

Roosevelt Andrews, the other named plaintiff, testified that he was paddled about ten times in one year at Drew (Tr. 273). He was paddled a number of times by his

[10] The district court found that James Ingraham "received 20 licks with a wooden paddle, which produced a painful and serious hematoma on his buttocks." (R. 1561)

[11] Stipulated testimony of Dr. Fernando Milanes (R. 1557).

[12] Stipulated testimony of Dr. Carlos Gamez (R. 1558).

[13] Exhibit 8, in form of prescription signed by Dr. Gamez.

physical education teachers for being late or for not "dressing out." [14]

On one occasion, a teacher stopped Roosevelt, told him he could not possibly get to his next class in time and then took him to Barnes. Barnes told Roosevelt to go into a bathroom with a number of other boys. Barnes allegedly lined about 15 boys up against the urinals and paddled them. According to Roosevelt, the blows must have hurt, because some of the boys were "hollering, cry, prayed, and everything else" [sic] (Tr. 294). After the other boys left, Roosevelt told Barnes that he would have made it to class if the teacher had not stopped him. Barnes told Roosevelt to bend over. Roosevelt refused. Then, according to Roosevelt, Barnes

> pushed me against the urinate thing, the bowl, and then he snatched me around to it and that's when he hit me first. He first hit me on the backsides and then I stand up and he pushed me against the bathroom wall, them things—that part the bathroom, the wall * * * Between the toilets, he pushed me against that and then he snatched me from the back there and that's when he hit me on my leg, then hit me on my arm, my back and then right across my neck, in the back here.

(Tr. 295.) Incensed over his treatment, Rooselvelt complained to Wright, but Wright seemed to support Barnes, his co-administrator.

At a later time, Wright paddled Roosevelt, apparently for the breakage of some glasses in sheet metal class, although Roosevelt claimed it was not his fault. Roosevelt testified

[14] "Dressing out" refers to putting on the proper uniform for physical education class. According to Roosevelt, he was once paddled for not having white socks. His teacher refused to listen to his explanation that his socks had been stolen. On another occasion, Roosevelt was paddled for not having tennis shoes, although he tried to explain to the teacher that someone had stolen his shoes and that he could not get new ones because his family could not afford them.

Another student, Reginald Bloom, testified that he was paddled for not having gym shorts, although his shorts had been stolen. Other students at Drew and other schools also testified to paddlings in physical education class, for such offenses as not dressing out, lateness, talking at inappropriate times, and other minor misconduct. These paddlings normally consisted of one or two or sometimes three licks.

that during this paddling, his wrist was hit, and that painful swelling occurred. Roosevelt went to see a doctor about his wrist. The doctor gave him pain pills and advised him to keep something cold on his wrist.[15] For about a week his wrist hurt, and he could not use his arm.

Donald Thomas testified that Barnes carried a paddle with him when he walked around the school and that Deliford carried brass knuckles.[16] Donald further testified to a scheme of punishment used in the auditorium. The seats were numbered and each student had an assigned seat. If a student misbehaved, his number was put on the board. Then Barnes would come into the auditorium and paddle the students whose numbers were listed, without asking who had done what. About five to eight students were paddled every day, generally receiving four or five licks or so each. Donald claimed he was paddled under these circumstances between 5 and 10 times. Another student, Nicky Williams, who was paddled under this system, complained that Barnes would not listen to any explanations.

Daniel Lee, who was paddled "lots of times" (Tr. 463) at Drew, described how on one occasion Barnes had a number of students "in a line, holding onto the chair, already paddling them," [17] and asked him to come over and "get a little piece of the board." (Tr. 480–481.) Daniel asked what he had done, and Barnes allegedly grabbed him and tried to throw him on the chair. In the ensuing confusion, Barnes

[15] Roosevelt's mother, Mrs. Willie Everett, supported Roosevelt's description of his wrist injury.

[16] James Ingraham, Roosevelt Andrews, Daniel Lee, Reginald Bloom, Ray Jones and Nicky Williams also testified that Barnes carried a paddle with him around the school. Mrs. Everett, Alphonse Hicks and Larry Jones saw Barnes at school with brass knuckles. Reginald Bloom claimed he saw Deliford with brass knuckles. The apparent visibility of the paddle and of the brass knuckles may have affected the atmosphere at Drew.

[17] As described by Daniel Lee and other witnesses, a student about to be paddled at Drew was sometimes required to bend over the back of a chair with his hands on the front of the seat of the chair. A number of witnesses testified that if the student let the chair go, or in some other fashion failed to take the punishment as prescribed, extra licks were given. Daniel Lee testified that on one occasion, Deliford told a group he was punishing that, "If you let go, if you let the chair go, every time you let the chair go, that's fifteen more licks. If you count to three and you don't be back down on the chair, that's fifteen more licks." (Tr. 479; see also 477.)

hit Daniel on the hand four or five times.[18] The hand swelled and hurt "and the bone was—it seems like the bone was going to come out" (Tr. 481), so Daniel's mother took him to the hospital for an X-ray. According to Daniel, a bone in his right hand was fractured. The Court, observing Daniel's hand, stated that "It seems to me to be disfigured, a portion of his right knuckle is enlarged to some degree." Daniel claimed that his hand still hurt, and swelled if he tried to use it.

Reginald Bloom testified that he was paddled at Drew about 15 times. One time Deliford paddled Reginald about fifty licks for allegedly making an obscene phone call to a teacher. Reginald claimed at the time that he had not made the call, and later another boy confessed to making it. Reginald testified on cross-examination that Deliford seemed to be hitting him as hard as he could, and that after the paddling was over, he had to go home because he couldn't sit down. A doctor examined Reginald's buttocks and prescribed ice packs. Reginald found it painful to sit down for about three weeks. Reginald's mother testified that her son's buttocks were "black and blue right across," swollen, and sore. She testified further that she applied ice packs to his buttocks for about three days or more after he was paddled. Another time Reginald and some other boys were called into the principal's office and accused of fighting on the way home from school. When the boys refused to be paddled, Deliford, Barnes and Wright allegedly manhandled one of the boys:

> Mr. Deliford grabbed him and Mr. Barnes and Mr. Deliford started jumping on him, throwing him around the room in the office.

[18] On cross-examination, the following exchange occurred:

"Q. Are you telling the Court that Mr. Barnes hauled off and deliberately hit you on the hand?

"A. Yes, sir; because he tried to throw me against the chair, you know, and I wouldn't get over there and so he grabbed me and hit me on the hand with the board.

"Q. He was trying to hit you on the rear end, wasn't he?

"A. No.

"Q. Are you saying he deliberately hit you on the hand?

"A. Yes, sir.

"Q. That has made your hand swell up?

"A. Yes, sir." (Tr. 487–488.)

> Then Mr. Wright, he got with Mr. Deliford and Mr. Barnes and started throwing the boy around the room, hitting him, throwing him on the table.

(Tr. 517.) The boy cried out that the men had broken his hand and two weeks later came back to school with a bandage on his hand. Reginald also testified that Barnes paddled boys for chewing gum and for not tucking in their shirttails.

Ray A. Jones and a boy named Carson were brought to the office at Drew by a policeman for "playing hooky." Deliford and Barnes gave each boy about fifty licks, causing both boys to cry. Two girls were present during this punishment and after the boys were paddled, the girls received about five licks each. Ray testified that he was unable to sit comfortably for about two weeks. Ray's grandmother stated that when she looked at Ray's buttocks, she saw "big swollen places."

Rodney Williams testified that because he wanted to wipe some foreign matter off his seat in the auditorium before sitting down, his number was put on the board and Barnes later took him to his office. Because he thought he was innocent, Rodney refused to "hook up."[19] Rodney testified that Barnes then hit him five or ten times on his head and back with a paddle, and then hit him with a belt. The side of Rodney's head swelled, and an operation proved necessary to remove a lump of some sort which had developed where Rodney had been struck. Rodney was out of school for about a week, and felt that the operation affected his memory and thinking. Another time, after Deliford had given him ten licks, Rodney's chest hurt and he threw up "blood and everything" (Tr. 601). Perhaps because he had asthma and heart trouble of some sort, Rodney also reacted to this paddling by "shaking all over" and "trembling," and required treatment at a local hospital. On a later occasion, a paddling by Wright again caused Rodney to cough up blood (Tr. 604).

Larry Jones testified that physical education teachers at Drew paddled him about ten times and that Deliford paddled him a "heap of times"—about ten. Several times Larry

[19] To assume a position standing in back of a chair, with hands on the seat of the chair, in preparation to being paddled.

received ten licks. On one accasion, when Larry refused to be paddled, "he [Deliford, or perhaps Barnes] had to start hitting me with that stick, and he put two knots on my head" (Tr. 651).

Janice Dean testified that, on her first day at Drew, she did not know about assigned seats in the auditorium and sat in the wrong place. As a result, Deliford gave her five licks. Another time, when Janice was sent to the office, Barnes administered fifteen licks, apparently without knowledge of the alleged misconduct, on a theory he allegedly explained as follows: "He said he knew we had done something wrong or we woudln't have been there." (Tr. 819).

Preston Sharpe testified that during four years at Drew, Deliford paddled him about ten times. One time Preston was paddled for having his shirttail hanging out. Another time, when he was supposed to receive ten licks, Preston received five extra licks for not reassuming a paddling position quickly enough after one of the licks, and three extra licks for allowing the chair to move and hit a door.

Nathaniel Evans testified that during one year at Drew, he was paddled four times. On one accasion, when the typing class was noisy, Barnes gave each of the fifteen students five licks. Another time, when Barnes was trying to find out who had been whistling, he took a class of 30–50 students and methodically began to paddle each student in an attempt to locate the one who had been whistling. After about half of the class had been paddled, some students told Barnes who had whistled, and the rest of the class was spared. Nathaniel received ten licks on another occasion when his name, along with six others, was written on the board in the auditorium.

III

Cruel and Unusual Punishment

[6] The Eighth Amendment prohibits the infliction of "cruel and unusual punishment." It is applicable to the states through the due process clause of the Fourteenth Amendment. *Robinson* v. *California,* 1962, 370 U.S. 660, 82 S. Ct. 1417, 8 L. Ed. 2d 758; *Furman* v. *Georgia,* 1973, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346.

[7–9] A number of federal courts have held that corporal punishment of school children is not *per se* a violation of the constitutional prohibition against cruel and unusual punishment. *Ware* v. *Estes,* N.D. Tex. 1971, 328 F. Supp. 657, aff'd per curiam 5 Cir. 1972, 458 F. 2d 1360; *Whatley* v. *Pike County Board of Education,* N.D. Ga. 1971, C.A. 977 (three-judge district court); *Glaser* v. *Marietta,* W.D. Pa. 1972, 351 F. Supp. 555; *Sims* v. *Board of Education of Independent School Dist. No. 22,* D.N.M. 1971, 329 F. Supp. 678.[20] We agree that at the present time corporal punish-

[20] In *Gonyaw* v. *Gray,* D. Vt. 1973, 361 F. Supp. 366, 368, as one ground for dismissal of an action brought by parents of students subjected to corporal punishment, the court stated that, "This statute does not offend the protection against cruel and unusual punishment secured by the Eighth Amendment, since this amendment provides a limitation against penalties imposed for criminal behavior. * * * Since neither plaintiff was punished for an offense which was criminal in nature, the Eighth Amendment does not proscribe the conduct assigned to the defendants." (Citations omitted.)

We find this approach unpersuasive. It was succinctly stated in Vol. 6 Harv. Civ. Rights—Civ. Lib. L. Rev., Corporal Punishment in the Public Schools, p. 585 n. 24:

"In *Trop* v. *Dulles,* 356 U.S. 86, 94–100 [78 S. Ct. 590, 2 L. Ed. 2d 630] (1958), the Supreme Court, in applying the eighth amendment to all punishments inflicted pursuant to 'penal laws,' set forth two tests to determine the meaning of penal. First, there must be the imposition of a 'disability for the purpose of punishment.' *Id.* at 96 [78 S. Ct. 590]. Second, there must be the prescription of a 'consequence that will befal[l] one who fails to abide by regulatory provisions * * * .' *Id.* at 97 [78 S. Ct. 590].

"Infliction of corporal punishment by public school personnel meets both tests." Corporal punishment of schoolchildren is "punishment" in every sense of the word, whether it is called "criminal" or "civil." Cf. In re Gault, 1967, 387 U.S. 1, 17, 87 S. Ct. 1428, 18 L. Ed. 2d 527. Corporal punishment is used by state officials to punish students for misbehavior committed during attendance at school, and resembles statutorily prescribed punishments for crimes in its purposes and effects. Some of the offenses punished by corporal punishment are in fact essentially criminal in nature, such as assaults or destruction of property. No doubt for these reasons, most courts which have considered the constitutionality of corporal punishment have assumed that such punishment may be evaluated under eighth amendment standards. See especially *Nelson* v. *Heyne,* 7 Cir. 1974, 491 F. 2d 352, and *Bramlet* v. *Wilson,* 8 Cir. 1974, 495 F. 2d 714. In *Bramlet* the court said, "an excessive amount of physical punishment [in a public school setting] could be held to be cruel and unusual and therefore prohibited." The court also stated, "the designation of conduct as other than 'punishment' is simply a label of

(Continued)

ment *per se* cannot be ruled violative of the Eighth Amendment. Mild or moderate use of corporal punishment as a disciplinary measure in an elementary or secondary school normally will involve only transitory pain of a non-intense nature and will not cause intense or sustained suffering or permanent injury. For this reason, although many might object to corporal punishment for a variety of reasons, such punishment *per se* cannot presently be held to be "excessive" in a constitutional sense,[21] or so "degrading" to the "dignity" of school children as to violate the Eighth Amendment.[22] Although the scope of the Eighth Amendment admittedly is not "static" and must draw its meaning from "evolving standards of decency," *Trop* v. *Dulles*, 1958, 356 U.S. 86, 101, 78 S. Ct. 590, 2 L. Ed. 2d 630, it is significant that a large number of states continue to authorize the use of moderate corporal punishment,[23] and that corporal punish-

(Continued)

convenience and will not obviate an eighth amendment inquiry. *Knecht* v. *Gilman*, 488 F. 2d 1136 (8th Cir. 1973)."

In *Jackson* v. *Bishop*, 8 Cir. 1968, 404 F. 2d 571, and *Wright* v. *McMann*, 2 Cir. 1967, 387 F. 2d 519, courts found impermissible cruelty in offensive "punishments" devised by prison officials, and at least some members of the Supreme Court have acknowledged the propriety of these findings. See *Furman* v. *Georgia*, 1972, 408 U.S. 238, 384, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (Chief Justice Burger dissenting, joined by Justices Blackmun, Powell and Rehnquist). We think punishments devised by school officials are similarly subject to Eighth Amendment scrutiny. Paraphrasing the opinion in *In re Gault*, *supra*, 387 U.S. at 47, 87 S. Ct. 1428, it would indeed be surprising if the Eighth Amendment protected hardened criminals but not school children.

[21] *O'Neil* v. *Vermont*, 1892, 144 U.S. 323, 339, 12 S. Ct. 693, 36 L. Ed. 450 (Field, J., dissenting): *Furman* v. *Georgia*, *supra*, 408 U.S. at 279–280, 92 S. Ct. 2726 (Brennan, Jr., concurring).

[22] *Furman* v. *Georgia*, *supra*, 408 U.S. 271–273, 92 S. Ct. 2726 (Brennan, Jr., concurring): *Trop* v. *Dulles*, 1958, 356 U.S. 86, 100, 78 S. Ct. 590, 2 L. Ed. 2d 630.

[23] According to a Report of the Task Force on Corporal Punishment published in 1972 by the National Education Association, at p. 26, submitted by the plaintiffs, corporal punishment is banned by state law in New Jersey and Massachusetts, and by state school board policy in Maryland. It is also banned, according to this report, in a number of large cities. However, at p. 24 of the report, it is stated that 13 states specifically permit corporal punishment, while in other states the teacher is given the same authority as the parent to discipline the child, or is simply authorized to maintain order and discipline in the classroom. Although the situation may have changed

ment apparently is still utilized in many school systems. Faced with this evidence of what is apparently considered appropriate by the American people, we would be loath to suggest that at this time corporal punishment is "unacceptable to contemporary society," *Furman* v. *Georgia*, *supra*, 408 U.S. at 277–279, 92 S. Ct. 2726 (Brennan, J., concurring), or that it is "abhored" by popular sentiment, *Furman* v. *Georgia*, *supra*, 408 U.S. at 332, 92 S. Ct. 2726 (Marshall, J., concurring).[24]

[10] Examining the specific policies on corporal punishment promulgated by the Dade County School Board, we find in them no violation of the Eighth Amendment. These policies do nothing more than authorize the mild or moderate use of such punishment. Policy 5144, revised effective August 5, 1970,[25] provides that the punishment must be administered "in kindness." "[N]o instrument shall be used that will produce physical injury to the student, and no part of the body above the waist or below the knees may be struck." Further, corporal punishment "should never be administered to a student whom school personnel know to be under psychological or medical treatment unless there has

somewhat since 1972, apparently corporal punishment of school children is still allowed in a large number of jurisdictions. This contrasts with the circumstances in *Jackson* v. *Bishop*, 8 Cir. 1968, 404 F. 2d 571. In that case, where the court held that the use of the strap in the Arkansas prisons violated the Eighth Amendment, the court took into consideration the fact that only two states still permitted the use of the strap. See 404 F. 2d at 580.

[24] The dissenters in *Furman* v. *Georgia* emphasized the fact that "Capital punishment is authorized by statute in 40 States, the District of Columbia, and in the federal courts for the commission of certain crimes" (408 U.S. at 385, 92 S. Ct. at 2801), and that juries acting as " 'the conscience of the community' " (408 U.S. at 388, 92 S. Ct. 2726), continued to impose capital punishment. See 408 U.S. at 385–391, 92 S. Ct. 2726 (Burger, C. J., dissenting). Justice Brennan suggests, however, that "The acceptability of a severe punishment is measured, not by its availability, for it might become so offensive to society as never to be inflicted, but by its use." 408 U.S. at 279, 92 S. Ct. at 2747. The evidence showed that capital punishment had actually been imposed only rarely in recent years. See 408 U.S. at 291 n. 40, 92 S. Ct. 2726. The plaintiffs do not suggest that corporal punishment has become so offensive that it is no longer in general use in many States.

[25] Policy 5144 was revised again on December 9, 1970, but there were no substantive changes in those parts of the policy dealing with corporal punishment.

been a pre-conference with the school psychologist or the physician."

Policy 5144 was revised extensively effective November 3, 1971. This revision imposes specific limits on the number of strokes—a maximum of five strokes for elementary school children and a maximum of seven strokes for junior and senior high school children. It requires the use of an instrument "calculated to eliminate possible physical injury." The punishment must be administered "posteriorly," and "under no circumstances shall a student be struck about the head or shoulders." The former provision as to students under psychological or medical treatment is retained. Emphasis upon consideration of the "nature of the misconduct" and the "seriousness of the offense," and the requirement of recording the "infraction of rules which caused the punishment," make it clear that the punishment is not to be inflicted arbitrarily or without cause. This revision is not obnoxious to the Eighth Amendment; it represents an effort to insure through specific guidelines that corporal punishment in Dade County will not go beyond "the moderate use of physical force or physical contact, as may be necessary to maintain discipline and to enforce school order and rules."

Although Policy 5144 does not on its face conflict with the Eighth Amendment, it is necessary to inquire further and to determine whether corporal punishment as applied in the Dade County schools offends Eighth Amendment standards. In fact, we deem it more important to know how corporal punishment is actually administered than to know the relevant rules or regulations.[26]

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[26] The opinion of Judge (now Justice) Blackmun in Jackson v. Bishop, 8 Cir. 1968, 404 F. 2d 571, 579, 580, finds that corporal punishment in prisons is difficult to adequately control by rules or regulations:

"We are not convinced that any rule or regulation as to the use of the strap, however seriously or sincerely conceived and drawn, will successfully prevent abuse. * * * Rules in this area seem often to go unobserved. * * * Regulations are easily circumvented. * * * Corporal punishment is easily subject to abuse in the hands of the sadistic and the unscrupulous. * * * Where power to punish is granted to persons in lower levels of administrative authority, there is an inherent and natural difficulty in enforcing the limitations of that power. * * * There can be no argument that excessive whipping or an inappropriate manner of whipping or too great frequency of whipping or the use of studded or overlong straps all constitute cruel and unusual punishment. But if whipping were to be authorized, how does one, or any court, ascertain the point which would distinguish the permissible from that which is cruel and unusual?"

"* * * we have no difficulty in reaching the conclusion that the use of the strap in the penitentiaries of Arkansas is punishment which, in this last third of the 20th century, runs afoul of the Eighth Amendment: that the strap's use, irrespective of any precautionary conditions which may be imposed, offends contemporary concepts of decency and human dignity and precepts of civilization which we profess to possess * * *."

The problems of control suggested in *Jackson* must also exist to some extent in schools, although perhaps to a lesser degree. It is for this reason that we are especially concerned with the actual administration of corporal punishment in the Dade County schools. If we found that adequate controls did not exist, or could not be established, we would be forced to consider adopting the remedy used in *Jackson*, namely, an injunction against any use of corporal punishment. That result must ensue if the controls prove inadequate. It has been cogently argued that a total ban on this punishment is the only effective control:

"While theoretically corporal punishment need not be brutal, there is no assurance that it will be inflicted moderately or responsibly. In the heat of anger, especially if provoked by personal abuse, some teachers are likely to exceed legal bounds. Moreover, if limited corporal punishment were permitted, controls would be unlikely to prevent the really unmistakable kind of satisfaction which some teachers feel in applying the rattan.[29] A total ban of this punishment would provide far more effective control.[30]

"[29] J. Kozol, Death at an Early Age 16–17 (1967).

"[30] A rule forbidding all corporal punishment would probably receive more compliance than the common law principles because all parties involved are more likely to be aware of it and conscious of any violation. This would likely be reinforced by the added case of convicting a violator, simply by holding the school official involved in contempt of a court order, where injunctive relief is obtained."

6 Harv. Civ. Rights—Civ. Lib. L. Rev., Corporal Punishment in the Public Schools, p. 585.

[11] From the evidence presented, we cannot say that the actual practice of corporal punishment in the Dade County school system as a whole violates the Eighth Amendment. However, we conclude that the plaintiffs' evidence as to the pattern, practice and usage of corporal punishment at Drew Junior High School was such that the trial court erred in dismissing Count Three under Rule 41(b), F.R. Civ. P., and also erred in dismissing Counts One and Two.

It is unclear whether the district court directly considered whether the pattern of punishment at Drew is violative of the Eighth Amendment. The district court found that "The instances of punishment which could be characterized as

severe, accepting the students' testimony as credible, took place in one junior high school." There is no doubt that this is a reference to Drew. In its conclusions of law, the district court declared that "Considering the system as a whole, there is no showing * * * [of a violation of the Eighth Amendment]." At another point, the district court stated that "The evidence has not shown that corporal punishment in concept, or as authorized by the School Board, or as applied throughout the system, is arbitrary, capricious, unreasonable or wholly unrelated to the legitimate state purpose of determining its educational policy." Apparently the district court felt that a constitutional violation could be shown only by evidence sufficient to prove employment of cruel and unusual punishment throughout the entire Dade County school system.

[12] We think that such an approach would be incorrect. In our view, a violation of the Eighth Amendment can occur at the level of a single educational institution. The record in this case demonstrates that individual schools in Dade County have great independence in the development of a policy or system as to corporal punishment.[27] This makes it appropriate to examine whether the authorities at Drew imposed a system of punishment violative of the Eighth Amendment.[28]

From the evidence presented, it appears that Wright, the principal; Deliford, the assistant principal; and Barnes, an assistant to the principal, all agreed either explicitly or implicitly to impose a harsh regime upon the students at Drew. This is dramatically illustrated by their cooperation in administering corporal punishment to James Ingraham. It is further demonstrated by other instances where two or

[27] This is reflected by the system developed at Drew, as well as by the fact that at least sixteen schools have discontinued the use of corporal punishment.

[28] Eighth Amendment cases in analogous situations support this approach. In *Nelson* v. *Heyne*, 7 Cir. 1974, 491 F. 2d 352, the Seventh Circuit concluded that the district court did not err in deciding that disciplinary beatings at the Indiana Boys School constituted cruel and unusual punishment. This school had a population of about 400 juveniles. In *Wright* v. *McMann*, 2 Cir. 1967, 387 F. 2d 519, the Second Circuit held that the allegations that the punishments imposed at a particular New York State prison violated the Eighth Amendment should not have been dismissed.

all three administrators were present during paddlings, or were aware of paddlings after they occurred.[29] Considering the evidence as a whole, it would be incredible to find that any one of these three individuals was unaware of the punishment policy pursued by the other two. Thus, the regime at Drew Junior High School was in fact a system of punishment established and imposed by those in authority.

[13] The injuries sustained by various students at Drew demonstrate that the punishment meted out at this school was often severe, and of a nature likely to cause serious physical and psychological damage.[30] The evidence of paddlings for relatively minor offenses, sometimes without any opportunity for the student to explain what happened, show that the punishment was sometimes arbitrary. The frequency of the use of corporal punishment suggests real oppressiveness.

[14] Whether punishment is cruel and unusual in a constitutional sense depends to a significant degree upon the circumstances surrounding the particular punishment. *O'Neil* v. *Vermont*, 1892, 144 U.S. 323, 337, 12 S. Ct. 693, 36 L. Ed. 450 (Field, J., dissenting); *Robinson* v. *California*, *supra*; *Furman* v. *Georgia*, *supra*.[31]

[29] For example, after Roosevelt Andrews was paddled by Barnes in a bathroom, he complained to Wright while Deliford was also present, and his father later complained to Barnes, Deliford and Wright. On a later occasion, Wright paddled Andrews and allegedly hit him on the wrist while Deliford and Barnes were present. Reginald Bloom testified that Deliford, Wright and Barnes manhandled and struck a boy suspected of fighting. Ray Jones testified that Deliford and Barnes were both present when he and another student received fifty licks each, and that the two administrators took turns giving the licks. Larry Jones testified that Deliford and Barnes were both present when he received "two knots on my head."

[30] The district court stated in the order of dismissal that, "After having heard the testimony in this case, this Court believes that corporal punishment may be administered in such a way that the resultant psychological harm to some students will be substantial and lasting."

[31] In *O'Neil* v. *Vermont*, Justice Field in dissent opined that while the Eighth Amendment was usually applied to punishments which inflicted torture, and which were attended with acute pain and suffering, it had a wider applicability:

"The inhibition is directed, not only against punishments of the character mentioned, but against all punishments which by their excessive length or severity are greatly disproportioned to the offenses charged. The whole

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In the present case, children aged twelve through fifteen were punished for alleged misconduct at school. In most instances, this misconduct did not involve physical harm to any other individual or damage to property. Some students claim they never engaged in misconduct at all, but were not given an adequate opportunity to show their innocence or were ignored when they attempted to explain why they did not deserve punishment.

The system of punishment utilized at Drew resulted in a number of relatively serious injuries, and thus clearly involved a significant risk of physical damage to the child. Corporal punishment also creates a risk of psychological damage. Dr. Scott Kester, an assistant professor of educational psychology at the University of Miami, testified that corporal punishment could damage a child's development by engendering anxiety, frustration, and hostility, or by causing sheer pathological withdrawal or hatred of the school environment. He further commented that since children model their behavior after adults, a child who is corporally punished may learn from this that physical force is an appropriate way in which to handle conflicts. Dr. Kester emphasized that the child who is corporally punished often becomes more aggressive and more hostile than he was prior to his punishment.

The evidence shows that corporal punishment is only one of a variety of measures available to school officials to punish students and to correct behavior. As found by the district court, "alternative measures in use range from parent and student conferences, the use of guidance counselors and psychologists, where available, to suspension and expulsion." [22]

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inhibition is against that which is excessive * * *." 144 U.S. 339–340. 12 S. Ct. 699.

Justice Marshall in *Furman* v. *Georgia*, 408 U.S. at 324–327, 92 S. Ct. 2726, argues persuasively that Justice Field's approach was adopted by the Court in later cases, including *Howard* v. *Fleming*, 1903, 191 U.S. 126, 24 S. Ct. 49, 48 L. Ed. 121; *Weems* v. *United States*, 1910, 217 U.S. 349, 30 S. Ct. 544, 54 L. Ed. 793, *Louisiana ex rel. Francis* v. *Resweber*, 1947, 329 U.S. 459, 67 S. Ct. 374, 91 L. Ed. 422, and *Trop* v. *Dulles*, 1958, 356 U.S. 86, 78 S. Ct. 590, 2 L. Ed. 2d 630. In *Robinson* v. *California*, 1962, 370 U.S. 660, 82 S. Ct. 1417, 8 L. Ed. 2d 758, the Court held that a statute which made addiction to narcotics a misdemeanor inflicted a cruel and unusual punishment. The Court stated that the penalty provided by the statute—ninety days—was not, in the abstract, cruel and unusual. However, the Court classified narcotics addiction as an illness, and noted that, "Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold." 370 U.S. 667, 82 S. Ct. 1421.

Taking into consideration the age of the individuals, the nature of misconduct involved, the risk of physical and psychological damage, and the availability of alternative disciplinary measures, we conclude that the system of punishment at Drew was "excessive" in a constitutional sense. The severity of the paddlings and the system of paddling at Drew, generally, violated the Eighth Amendment requirement that punishment not be greatly disproportionate to the offenses charged. Our review of the evidence has further convinced us that the punishment administered at Drew was degrading to the children at that institution.

[15] Our result is not inconsistent with *Ware* v. *Estes*, *supra*, and other cases involving corporal punishment of children. In the *Ware* case, there was evidence of abuse by some of the teachers in the Dallas school district, but there is no indication that the system of punishment in the school system as a whole, or in any particular school, approached the severity and arbitrariness of the system developed at

[22] In 1972 a Task Force of the National Education Association suggested a number of alternatives to the use of corporal punishment and proposed a "Model Law Outlawing Corporal Punishment":

"Corporal Punishment of Pupils

"No person employed or engaged by any educational system within this state, whether public or private, shall inflict or cause to be inflicted corporal punishment or bodily pain upon a pupil attending any school or institution within such education system; provided, however, that any such person may, within the scope of his employment, use and apply such amounts of physical restraint as may be reasonable and necessary:

"1) to protect himself, the pupil or others from physical injury;

"2) to obtain possession of a weapon or other dangerous object upon the person or within the control of a pupil;

"3) to protect property from serious harm; and such physical restraint shall not be construed to constitute corporal punishment or bodily pain within the meaning and intendment of this section. Every resolution, bylaw, rule, ordinance, or other act or authority permitting or authorizing corporal punishment or bodily pain to be inflicted upon a pupil attending a school or educational institution shall be void."

See Report of The Task Force on Corporal Punishment, National Education Association, p. 29–A.

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Drew. Also, the court in *Ware* noted that in one case where a student was severely injured, the assistant principal responsible for the injury was suspended from his duties for several months. There is no indication from the record in this case that any efforts were made in the relevant time period to control or to moderate the system of punishment established by Wright, Deliford and Barnes.[33]

In *Nelson* v. *Heyne*, 7 Cir. 1974, 491 F. 2d 352, 354 n. 4, the Seventh Circuit states that, "The law appears to be well settled in both state and federal jurisdictions that school officials do not violate 8th Amendment proscriptions against cruel and unusual punishment *where the punishment is reasonable and moderate.*" (Emphasis added.) In the *Nelson* case, the court agreed with the district court's conclusion that paddlings administered by guards at the Indiana Boys School violated the Eighth Amendment. The relevant facts in that case, as described by the Seventh Circuit panel, are comparable to the facts developed in the district court with regard to Drew.

Since the plaintiffs' evidence makes a prima facie case of violation of the Eighth Amendment at Drew Junior High School, the dismissal of Count Three of the complaint must be reversed and remanded to the district court for further proceedings. While the defendants must, of course, be afforded an opportunity to offer evidence, the district court may find no reason to require the plaintiffs to offer their evidence a second time. It may proceed with the case as though defendants' motion for dismissal had been denied.

[33] Superintendent Whigham testified that he believed there was "an inquiry or objection to that incident [Ingraham paddling of October 6, 1970] by the area office" (Tr. 103). However, Earl Wells, a school district director and administrator, who investigated the Ingraham paddling, testified that as a result of his investigation, "I formulated an opinion that Mr. Wright had a right to paddle the child" (Tr. 234). When asked whether he had formulated an opinion as to whether or not Mr. Wright acted appropriately concerning the paddling of Ingraham, Wells replied, "I think he did" (Tr. 234). Wells explained that he formulated his opinion on the basis of Wright's intent, but admitted that he did not know whether Ingraham had resisted the paddling, and did not find out how many licks Ingraham had received (Tr. 235). We note that specific intent to deprive a person of his constitutional rights is not necessary to maintain a civil rights action. *Monroe* v. *Pape*, 1961, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492; *Pierson* v. *Ray*, 1967, 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288; *Whirl* v. *Kern*, 5 Cir. 1969, 407 F. 2d 781 and cases cited therein.

See *Federal Deposit Insurance Corp.* v. *Mason*, 3 Cir. 1940, 115 F. 2d 548; *Gulbenkian* v. *Gulbenkian*, 2 Cir. 1945, 147 F. 2d 173; 5 Moore ¶ 41.13[2].

The dismissal of Counts One and Two must be reversed and remanded for further proceedings consistent with this opinion. Our examination of the record convinces us that there was sufficient evidence produced by James Ingraham and Roosevelt Andrews to avoid a directed verdict. There was evidence of a system of punishment violative of the Eighth Amendment. There was further evidence from which a jury might conclude that Ingraham and Andrews were victims of this system. Ingraham's description of how he was punished, and the medical evidence concerning the extent of his injuries, would justify sending his case to the jury. Andrews' description of Barnes' alleged assault upon him in the bathroom, and his description of his paddling by Wright in which his wrist was injured, are enought to avoid a directed verdict. On remand, the district court may allow the joinder of whatever state claims the plaintiffs may have, in accordance with the rules concerning pendent jurisdiction. See *United Mine Workers* v. *Gibbs*, 1966, 383 U.S. 715, 86 S. Ct. 1130, 16 L. Ed. 2d 218.[34]

[34] Counsel for defendants almost conceded as much upon oral argument when in response to an inquiry he stated:

"Your Honor. The class action count was an equitable matter that was tried to the court. When the evidence was finished on that, we had a conference, and it was agreed between the court and the counsel that Mr. Feinberg could present any additional evidence that he wanted to present on the two individual damage counts, then the court would take under advisement my motion for directed verdict on those two counts. Now, he ruled on those two counts that the punishment of Ingraham and the punishment of Andrews didn't rise to constitutional proportions. Ingraham got 20 licks, he had bruises, painful bruises; Andrews had 2 or 3 lickings, of no more than 5 licks each; and the judge simply decided that there was—that these didn't meet any of the four principles of Justice Brennan to rise to the dignity of cruel and unusual punishment, even taking all the evidence and construing it most favorably to the plaintiffs. Now, he said then that if he had been tried for those two counts before a jury, and we had a right to a jury trial and had demanded it on those—if he had been trying those before a jury, had found no federal deprivation, he could still under the pendent jurisdiction theory have allowed it to go to the jury for damages in tort. However, in this case there would be no saving of judicial time and labor because we would have to go back and have a new jury trial all over again in order to get to that point, so he dismissed all three."

[16] Assuming that Counts One and Two continue to be for jury trial and unless otherwise stipulated, the issues of fact common to the actions at law and the suit in equity must first be heard and determined by a jury's verdict rendered on one or both of Counts One and Two. *Beacon Theatres* v. *Westover*, 1959, 359 U.S. 500, 79 S. Ct. 948, 3 L. Ed. 2d 988; *Dairy Queen* v. *Wood*, 1962, 369 U.S. 469, 473, 82 S. Ct. 894, 8 L. Ed. 2d 44; *Thermo-Stitch, Inc.* v. *Chemi-Cord Processing Corp.*, 5 Cir. 1961, 294 F. 2d 486; *Wright & Miller*, Federal Practice and Procedure: Civil § 2338.

[17] The complaint is somewhat unclear as to whether the plaintiffs allege that Superintendent Whigham is liable for damages for the paddlings to Ingraham and Andrews. Paragraph 11 of the Complaint states that, "Upon information and belief, the defendant Whigham and/or his agents and employees in the administrative hierarchy of the Dade County school system have knowingly lent their tacit or explicit support and approval to the methods of discipline and behavorial control described herein." Yet neither the "First Cause of Action," relating to Ingraham, nor the "Second Cause of Action," relating to Andrews, mentions Whigham. Possibly the plaintiffs mean to hold Whigham responsible in damages on the basis of a negligence theory along the lines suggested in *Roberts* v. *Williams*, 5 Cir. 1972, 456 F. 2d 819, 827, modified, 456 F. 2d 834. Although we think this matter should be clarified and dealt with initially by the district court, we note that there is some question whether the Eighth Amendment extends to include negligence.[35]

IV

Due Process

Plaintiffs allege that corporal punishment as administered in Dade County deprives students of due process of law in

[35] *Roberts* v. *Williams*, 5 Cir. 1972, 456 F. 2d 819, 834 (Simpson, J., specially concurring): *Anderson* v. *Nosser*, 5 Cir. 1972, 456 F. 2d 835 (*en banc*), 842 (Simpson J., concurring specially and joined by Gewin, Coleman, Dyer, Morgan, Clark, Ingraham and Roney, JJ.); *Parker* v. *McKeithen*, 5 Cir. 1974, 488 F. 2d 553, 556 n. 6.

violation of the Fourteenth Amendment. They claim that student. are provided no procedural safeguards before corporal punishment is imposed. They further claim that corporal punishment violates due process because it is arbitrary, capricious and unrelated to the achievement of any legitimate educational purpose.

A. Policy 5144, as revised effective August 5, 1970, provides the following procedural provisions:

> If it appears that corporal punishment is likely to become necessary, the teacher must confer with the principal. The principal will determine the necessity for corporal punishment and designate the time, place and the person to administer said punishment. In any case, the student should understand clearly the seriousness of the offense and the reason for the punishment. Care should be taken that the period of time between the offense and the punishment is not so long as to cause undue anxiety in the pupil.

The revision effective November 3, 1971 retains the substance of these provisions, with a few additions. Under the revision, the principal may designate an individual with whom the teacher must consult and who may direct the administration of corporal punishment. Also, the principal must maintain a log of all instances where corporal punishment is administered.

Plaintiffs in this case argue that if corporal punishment is not *per se* unconstitutional, still a child has a constitutional right to be free from unwarranted punishment. In reliance upon *Dixon v. Alabama*, 5 Cir. 1961, 294 F. 2d 150, and later cases, the plaintiffs claim that corporal punishment in Dade County is administered without adequate procedural safeguards. The defendants apparently concede that corporal punishment in Dade County is a relatively serious punishment. In their brief they state that "Corporal punishment in the public schools of Dade County, Florida, is a last resort means of discipline as an alternative to suspension or expulsion * * * ." (Defendants' Brief, p. 17.) Defendants state that a list of infractions for which corporal punishment would be administered would remove a "judgment aspect" otherwise applicable as to whether such punishment should be administreed to a particular student. Defendants further

say that a formal hearing would not be desirable because it would lengthen the time before punishment, and lead to undue anxiety on the part of the student involved.

The district court found that, "There is no published schedule of infractions for which corporal punishment is authorized, nor any formal procedural requirements which must be observed before punishment may be administered." In its conclusions of law, the district courts stated that,

> The concept of due process is premised upon fairness and reasonableness in light of the totality of the circumstances then existing. The due process limitation does not unduly confine officials who have the responsibility of governing. Whether the constitution requires that a particular right obtain in a specific proceeding depend supon a complexity of factors.
>
> It seems to this Court that if there is any good purpose to be served by corporal punishment in the schools, such purpose would be long since passed if formal notice and hearing were required before a paddling. There has been no deprivation of "due process."

[18] We agree with the district court that the full panoply of procedures associated with the judicial process are not required in determining whether to administer corporal punishment. At the same time, due process demands that the procedures followed by school officials comport with fundamental fairness. See *Hannah* v. *Larche*, 1960, 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed. 2d 1307.

The approach outlined in *Whatley* v. *Pike County Board of Education*, N.D. Ga. 1971, No. 977 (unreported, three-judge district court) suggests an appropriate resolution of the due process question. In a case involving an eleven-year-old pupil, the court said:

> Where, as here, the pupil was to be promptly corrected for his transgressions, and long-term consequences stemmed only from his refusal to accept his punishment, the flexible elements of due process require only that the student know and understand the rule under which he is to be punished, and that in cases where there is doubt as to the actual offender, further inquiry be made by the school officials concerned.

If a student must "know and understand" the rule under which he is to be punished, then clearly the school authorities must tell him before he is punished precisely what he has done which merits punishment. If the student concedes that he has engaged in misconduct, then all that remains is to determine whether corporal punishment is appropriate, and to determine the details of its administration. In Dade County, under Policy 5144, the principal or his administrative designee is responsible for making these decisions. Thus, these decisions are usually made by someone who was not directly involved in the circumstances surrounding the alleged misconduct.

[19, 20] If the student concedes that he has engaged in certain conduct, but claims that he did not know that such conduct was prohibited, the school authorities should proceed with caution. Inquiry should be made to determine whether the student knew or should have known that his conduct violated school rules or policies. Punishment of any sort would be patently unfair where the student was genuinely unaware of a school regulation, and had no reason to know that he was engaging in conduct which might later be used as a basis for punishment. Cf. *St. Ann et al.* v. *Palisi et al.*, 5 Cir. 1974, 495 F. 2d 423. The publishing of written rules of conduct would obviously eliminate many problems which might arise in this area.

[21–23] If the student claims that he is innocent of the conduct which merits punishment, school officials should make sufficient inquiries to insure that, to the contrary, the student is guilty beyond any reasonable doubt. After all, once the student is corporally punished, no retraction of punishment is possible. This means that eyewitnesses should be questioned by the principal or his designee and the student should be allowed to call witnesses in his own behalf. Also, the student should be allowed to respond to the witnesses against him, and in some cases he should be accorded an opportunity to ask them relevant questions. Of course, all of this may take place in an informal setting, and no formal rules of procedure or evidence need be followed.

[24] Examining the procedures prescribed under Policy 5144, we find them not inconsistent with the procedures we have outlined. In implementing Policy 5144, most principals

probably already follow the procedural guidelines we have suggested. Of course, the testimony of students from Drew indicates that this has not uniformly been the case.[36]

B. Plaintiffs urge that corporal punishment is unrelated to the achievement of any legitimate educational purpose. The testimony of Dr. Kester supports this claim to some extent. Dr. Kester stated that he could think of "no reputable authority who recommends corporal punishment" (Tr. 737), and that he could not think of "a renowned or leading authority in psychology, educational psychology, educational research, psychiatry, who advocates corporal punishment in the public schools or in the schools" (Tr. 756). He modified his position somewhat by stating that he could think of no reputable authority who recommended corporal punishment to suppress behavior "without immediately following it as soon as possible with a positive reinforcement of acceptable behavior." Dr. Kester also conceded that there might be some authorities who favored corporal punishment,[37] and that "some may say that it accomplishes the thing that I have already said that it accomplished: that you can terminate an unwanted behavior if you are willing to bear the consequences, however negative they may be" (Tr. 756). Also, counsel for plaintiffs stated that he did not propose to establish that there is not a shred of psychological or educational justification for corporal punishment.

[25, 26] In light of the concessions by plaintiffs' expert and plaintiffs' counsel, and in light of other cases involving corporal punishment where there apparently was evidence of the utility of corporal punishment,[38] we are unwilling

[36] We are particularly disturbed by the testimony that whole classes of students were corporally punished for the misconduct of a few. A number of students claimed that physical education teachers in particular would occasionally give everyone in the class one or two swats when the class was noisy, or when something was stolen. (Tr. 429–31, 591, 637–8, 647, 809–811, 873, 878.) Cf. *St. Ann et al.* v. *Palisi et al.*, 5 Cir. 1974, 495 F. 2d 423.

[37] "As I said before, sir, I have not read of someone I consider to be an authority, a leading authority in the field, in fact I can't remember an instance, although I'm sure there is somebody who writes something somewhere who could get it in print—you can get almost anything in print—who said that corporal punishment is a good thing." (Tr. 755–756.)

[38] See *Ware* v. *Estes*, *supra*, 323 F. Supp. at 659; *Glaser* v. *Marietta*, *supra*, 351 F. Supp. at 557.

to say that mild or moderate corporal punishment is unrelated to the achievement of any legitimate educational purpose. However, in this case the severe punishment meted out at Drew went beyond legitimate bounds.

In *Dixon* v. *Alabama*, 5 Cir. 1961, 294 F. 2d 150, 157, this Court stated:

> Turning then to the nature of the governmental power to expel the plaintiffs, it must be conceded * * * that that power is not unlimited and cannot be arbitrarily exercised. Admittedly, there must be some reasonable and constitutional ground for expulsion or the courts would have a duty to require reinstatement.

In a recent case, this language was explained as follows:

> This passage and the constitutional provision it elaborates do not license federal courts to review and revise school board disciplinary actions at will. Application is limited to the rare case where there is shocking disparity between offense and penalty.

Lee v. *Macon County Board of Education*, 5 Cir. 1974, 490 F. 2d 458, 460 n. 3. In the present case, as regards Drew Junior High School, there exists "a shocking disparity" between the offenses committed by various of the students and the harsh punishment imposed by school officials. Thus, we conclude that the system of punishment at Drew not only violated the constitutional prohibition against cruel and unusual punishment, but also violated due process. Cf. *Anderson* v. *Nosser*, 5 Cir. 1972, 456 F. 2d 835 (*en banc*); *St. Ann et al*, v. *Palisi et al.*, *supra*.

V

Right of the Parent and Child to Prohibit Corporal Punishment by School Officials

[27] Paragraph 17 of the complaint alleges that following a beating administered to Roosevelt Andrews, Roosevelt's father instructed school officials to refrain from assaulting, beating or otherwise physically injuring his son. Paragraph 18 of the complaint alleges that despite these instructions, Roosevelt was later paddled by school officials. Paragraph 22 of the complaint alleges that corporal punishment abridges a

student's right to physical integrity, dignity of personality, and freedom from arbitrary authority in violation of the Fourth, Ninth and Fourteenth Amendments. At trial, Phyllis Straus, the mother of four children who attend Dade County schools, testified that despite her explicit directions, her children had been corporally punished. A number of children, including James Ingraham, testified that they had refused to accept corporal punishment, but were paddled anyway. In our view, the plaintiffs clearly raised the issue of whether school officials may properly administer corporal punishment if the parent or child has objected to its administration.

In *Ware* v. *Estes*, N.D. Tex. 1971, 328 F. Supp. 657, the district court dismissed an action where the plaintiffs alleged in part that the defendants administered corporal punishment without the prior permission of the parent or student in violation of the Fourteenth Amendment. The district court's reasoning is revealed by the following portion of its opinion:

> Under the doctrine of *Meyer* v. *Nebraska*, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 (1922), the state cannot unreasonably interfere with the liberty of parents and guardians to direct the upbringing and education of children under their control. These parental rights are not beyond limitation. *Prince* v. *Commonwealth of Massachusetts*, 321 U.S. 158, 166, 64 S. Ct. 438, 88 L. Ed. 645, 652 (1943). In order for a deprivation of due process under the fourteenth Amendment, to occur, the rules and policies of the school district must bear 'no reasonably relation to some purpose within the competency of the State.' *Pierce* v. *Society of Sisters*, 268 U.S. 510, 535, 45 S. Ct. 571, 573, 69 L. Ed. 1070, 1076 (1924).
>
> According to the testimony, it cannot be said that the Dallas Independent School District's policy on the use of corporal punishment bears no reasonable relation to some purpose within the competency of the state in its educational function.

328 F. Supp. at 658–659. On appeal, this Court simply stated the following: "We are in agreement with the well-considered memorandum opinion of the district court * * * and its judgment is affirmed." *Ware* v. *Estes*, 5 Cir. 1972, 458, F. 2d 1360.[39]

The result in *Ware* depends to some extent upon the particular circumstances revealed by the evidence in that case. In the present case, the school authorities have presented no evidence, and so have had no opportunity to demonstrate the extent to which corporal punishment is a useful or necessary discipliary measure in Dade County.[40] In any event, the approach taken on this issue by the district court in *Ware* deserves re-examination in light of certain recent Supreme Court cases which touch on the relationship of parent and child, and the right of privacy. These cases include *Stanley* v. *Illinois*, 1972, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551; *Wisconsin* v. *Yoder*, 1972, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15; *Roe* v. *Wade*, 1973, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147. It is not appropriate at the present time to attempt to resolve this issue. Instead, we suggest that, upon remand, the district court make findings of fact and conclusions of law on this aspect of the case.

The judgments of dismissal of each of the counts of the complaint are reversed and the cases are remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

LEWIS R. MORGAN, Circuit Judge, dissents.

LEWIS R. MORGAN, Circuit Judge (dissenting):

I respectfully dissent from the holdings of the majority. I feel that the majority opinion is in conflict with our holding in *Ware* v. *Estes*, N.D. Texas. 1971, 328 F. Supp. 657, aff'd 5 Cir. 1972. 458 F. 2d 1360, cert. den., 409 U.S. 1027. 93 E. Ct. 463, 34 L. Ed. 2d 321. The familiar section of the Civil Rights Act under which these actions are founded, 42 U.S.C. § 1983, provides that a person acting under color of

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[39] In *Whatley* v. *Pike County Board of Education*, D. Ga. 1971 (unreported, three-judge district court), the court disagreed with plaintiff's argument that "the sanctity of the family relationship, the so-called right of privacy, and the right to physical integrity or dignity of personality" were violated by the Georgia statute authorizing corporal punishment. It is somewhat unclear exactly what the plaintiff in this case argued.

[40] It is by no means certain that corporal punishment is of the same importance in every community. See, for example, *Glaser* v. *Marietta*, *supra*.

state law who deprives another of rights, privileges, or immunities secured by the Constitution shall be liable to the injured party in an action at law or suit in equity. It is, of course, essential to recovery in cases under Section 1983 that the plaintiff establish an invasion of federally protected constitutional rights; otherwise, there is no federal jurisdiction. *Rosenberg* v. *Martin*, 2 Cir. 1973, 478 F. 2d 520. However, in a school system such as the Dade County System, with approximately 12,500 teachers and administrative personnel, a student population in excess of 242,000 pupils, and 237 schools, a disciplinary event in one school, Drew Junior High School, cannot give rise to a constitutional question and a right to have the federal courts intervene. For this reason, I would affirm the judgment of the district court which dismissed the actions.

EN BANC OPINION

United States Court of Appeals, Fifth Circuit

No. 73–2078.

ELOISE INGRAHAM, AS NEXT FRIEND, ETC., ET AL., PLAINTIFFS-APPELLANTS

v.

WILLIE J. WRIGHT, I, INDIVIDUALLY, ETC., ET AL., DEFENDANTS-APPELLEES

Jan. 8, 1976

Appeal from the United States District Court for the Southern District of Florida.

Before BROWN, Chief Judge, RIVES, GEWIN, BELL, THORNBERRY, COLEMAN, GOLDBERG, AINSWORTH, GODBOLD, DYER, SIMPSON, MORGAN, CLARK, RONEY and GEE, Circuit Judges

LEWIS R. MORGAN, Circuit Judge:

Plaintiffs James Ingraham and Roosevelt Andrews, two junior high school students in Dade County, Florida, filed a complaint containing three counts on January 7, 1971.

Counts one and two were individual actions for compensatory and punitive damages brought under 42 U.S.C. §§ 1981–88, with jurisdiction claimed under 28 U.S.C. § 1331 and § 1343. Plaintiffs claimed that personal injuries resulted from corporal punishment administered by certain defendants in alleged violation of their constitutional rights, in particular their right to freedom from cruel and unusual punishment. Specifically, plaintiff Ingraham alleges in count one that on October 6, 1970, defendants Principal Wright and Assistant Principals Deliford and Barnes struck plaintiff repeatedly with a wooden instrument, injuring plaintiff and causing him to incur medical expenses. Plaintiff testified that this paddling was precipitated by his and several other children's disruption of a class over the objection of the teacher. Defendant Wright removed plaintiff and the other disruptive students to his office whereupon he paddled eight to ten of them. Wright had initially threatened plaintiff with five blows, but when the latter refused to assume a paddling position, Wright called on defendants Deliford and Barnes who held plaintiff in a prone position while Wright administered twenty blows. Plaintiff complained to his mother of discomfort following the paddling, whereupon he was taken to a hospital for treatment. Plaintiff introduced evidence that he had suffered a painful bruise that required the prescription of cold compresses, a laxative, sleeping and pain-killing pills and ten days of rest at home and that prevented him from sitting comfortably for three weeks.

Plaintiff Andrews alleges two incidents of corporal punishment as the basis for his claim for damages in count two of the complaint. Plaintiff alleges that on October 1, 1970, he, along with fifteen other boys, was spanked in the boys' restroom by Assistant Principal Barnes. Plaintiff testified that he was taken by a teacher to Barnes for the offense of tardiness, but that he refused to submit to a paddling because, as he explanied to Barnes, he had two minutes remaining to get to class when he was seized and was not, therefore, guilty of tardiness. Barnes rejected plaintiff's explanation and, when plaintiff resisted punishment, struck him on the arm, back, and across the neck.

Plaintiff Andrews was again spanked on October 20, 1970. Despite denials of guilt, plaintiff was paddled on the back-

side and on the wrist by defendant Wright in the presence of defendants Deliford and Barnes for having allegedly broken some glass in sheet metal class. As a result of this paddling, plaintiff visited a doctor and received pain pills for the discomfort, which lasted approximately a week.

Count three is a class action brought by plaintiffs Ingraham and Andrews as representatives of the class of students of the Dade County school system who are subject to the corporal punishment policies issued by defendant members of the Dade County School Board. This count seeks final injunctive and/or declaratory relief against the use of corporal punishment in the Dade County School System and can be divided into three constitutional arguments. First plaintiffs claim that infliction of corporal punishment on its face and as applied in the present case constitutes cruel and unusual punishment in that its application is grossly disproportionate to any misconduct in which plaintiffs may have engaged. Second, plaintiffs claim that because it is arbitrary, capricious and unrelated to achieving any legitimate educational goal, corporal punishment deprives all students of liberty without due process of law in violation of the Fourteenth Amendment. Plaintiffs also allege that the failure of defendants to promulgate a list of school regulations and corresponding punishments increases the capriciousness of the punishment. Finally, plaintiffs claim that defendants' failure to provide any procedural safeguards before inflicting corporal punishment on students, including adequate notice of alleged misconduct, hearing, examination and cross-examination, representation and notice of rights, constitutes summary punishment and deprives students of liberty without due process of law in violation of the Fourteenth Amendment.

Plaintiffs presented their evidence in count three of the complaint in a week-long trial before the district court without a jury. At the close of plaintiffs' case, defendants moved for dismissal under Rule 41(b), F.R. Civ. P. which provides in part:

> After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

By agreement of the parties the court considered the evidence offered to support count three as having been offered on counts one and two and as if upon motion for directed verdict for these two counts. The district court then dismissed count three of the complaint and, concluding that a jury could not lawfully find that either of the plaintiffs sustained a deprivation of constitutional rights, likewise dismissed counts one and two.

I. JURISDICTION

[1, 2] Defendants assert that there is no federal jurisdiction over count three under 42 U.S.C. §§ 1981–1988 and 28 U.S.C. § 1331 and § 1343 because the Dade County School Board and the Superintendent of Schools, Edward L. Whigham, are not "persons" and hence are not amenable to suit. Defendants rely on *City of Kenosha* v. *Bruno*, 412 U.S. 507, 93 S. Ct. 2222, 37 L. Ed. 2d 109 (1973), in which the Supreme Court held that a municipality was not a "person" within the meaning of § 1983. While it is well-settled that a school board is not a "person" and thus cannot be sued under § 1983, it is clear that a school superintendent is a "person" amenable to suit. *Sterzing* v. *Ford Bend Independent School District*, 496 F. 2d 92, at 93, n. 2 (5th Cir. 1974). We, therefore, hold that jurisdiction was improperly granted against the Dade County School Board and, accordingly, that part of the complaint must be dismissed.

Jurisdiction to proceed against Edward L. Whigham, Superintendent of Schools, was, however, properly granted.

II. CRUEL AND UNUSUAL PUNISHMENT

[3] Plaintiff-appellants allege that the infliction of corporal punishment on public school children on its face, and as applied in the instant case, constitutes cruel and unusual punishment under the Eighth Amendment sufficient to entitle plaintiffs to damages and injunctive relief against the Dade County School Board under § 1983. We do not agree. It is the opinion of the majority of this court that the Eighth Amendment does not apply to the administration of discipline, through corporal punishment, to public school children by public school teachers and administrators.

[4] The Eighth Amendment states "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Not only the connotation of the words "bad," and "fine," but the legislative history [1] concerning enactment of the bill of rights supports an argument that the Eighth Amendment was intended to be applied only to punishment invoked as a sanction for criminal conduct.[2] Indeed, Supreme Court decisions which have interpreted the Amendment have focused on the inherent cruelty of penalties "inflicted by a judicial tribunal in accordance with law and retribution for *criminal conduct.*" *Negrich* v. *Hohn*, 246 F. Supp. 173 (W.D. Pa. 1965), *affirmed on other grounds*, 379 F. 2d 213 (3rd Cir. 1967) (emphasis added). *E.g.*, *Furman* v. *Georgia*, 408 U.S. 238, 92 S. Ct. 2726, 33 L. Ed. 2d 346 (1972) (death penalty as cruel and unusual punishment); *Robinson* v. *California*, 370 U.S. 660, 82 S. Ct. 1417, 8 L. Ed. 2d 758 (1962) (state's imprisonment of narcotics addict as cruel and unusual punishment); *Weems* v. *United States*, 217 U.S. 349, 30 S. Ct. 544, 54 L. Ed. 793 (1910) (disproportionate punishment of fifteen years to hard labor for conviction of strict liability offense as cruel and unusual punishment).

Although the Supreme Court has not yet discussed the applicability of the Eighth Amendment to corporal punishment administered in the public schools, a few lower courts have

[1] The legislative history surrounding the enactment of the cruel and unusual clause indicates that it was intended to prevent the tortious and barbarous methods used in some European countries to extort confessions and to punish crimes. The following argument delivered in favor of the proposed "cruel and unusual clause" of the Bill of Rights indicates the intended limits of its scope:

"[Congress will] have to ascertain, point out, and determine, what kinds of punishments shall be inflicted on persons *convicted of crimes*. They are nowhere restrained from inventing the most cruel and unheard of punishments and annexing them to *crimes;* and there is no constitutional check of them, but that racks and gibbets may be amoungst the most mild instruments of their discipline."

Granucci, *Nor Cruel and Unusual Punishments Inflicted: The Original Meaning*, 57 Cal. L. Rev. 839 at 841 (1969), quoting from 2 *J. Elliot*, The Debates in the Several State Conventions on the adoption of the Federal Constitution, 111 (2d Ed. 1881). (Emphasis added).

[2] We are not persuaded by the majority's argument in the original panel decision that the Supreme Court decision in *Trop* v. *Dulles* requires a holding that the Eighth Amendment reaches the administration of corporal punishment in public schools:

"It was succinctly stated in Vol. 6 Harv. Civ. Rights—Civ. Lib. L. Rev., Corporal Punishment in the Public Schools, p. 585, n. 24: "*In Trop* v. *Dulles*,

356 U.S. 86, 94–100 [78 S. Ct. 590, 2 L. Ed. 2d 630] (1958), the Supreme Court, in applying the eighth amendment to all punishments inflicted pursuant to 'penal laws,' set forth two tests to determine the meaning of penal. First, there must be the imposition of a 'disability for the purpose of punishment.' *Id.* at 96 [78 S. Ct. 590]. Second, there must be the prescription of a 'consequence that will befall one who fails to abide by regulating provisions * * * *.' *Id.* at 97 [78 S. Ct. 598].

"Infliction of corporal punishment by public school personnel meets both tests." *Ingraham* v. *Wright*, 498 F. 2d 248, 259–60, n. 20 (5th Cir. 1974).

In *Trop* v. *Dulles*, the Supreme Court was addressing the constitutional propriety of § 401(g) of the Nationality Act of 1940 which provides for the loss of United States citizenship by a national who has deserted the military forces of the United States during a time of war and who has been convicted by court-martial. In setting up a "purpose" test to determine what is "penal" and what is thereby within the scope of the Eighth Amendment's prohibition against cruel and unusual punishment, the court was countering the government's argument that the statute was "non-penal" in that it provided for loss of citizenship as opposed to incarceration. 356 U.S. 96, 98–99, 78 S. Ct. 590, 2 L. Ed. 2d 630, 641.

Yet, the court in *Trop* v. *Dulles* was still addressing the imposition of an essentially *criminal* sanction. The court several times refers to the desertion for which defendant was losing his citizenship, as a "crime," e.g., 356 U.S. at 96, 78 S. Ct. 590, 2 L. Ed 2d at 640. In addition, denationalization under 401(g) could occur only after conviction by court-martial under 10 U.S.C. § 885, enacted August 10, 1956. The loss of citizenship found to be reached by the Eighth Amendment in *Trop* contains elements of criminal sanctions imposed by a judicial tribunal which are strikingly absent in the application of discipline in the public schools.

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considered the issue and divided on its resolution.[3] We concur with the approach taken by the two district courts that have held the Eighth Amendment to be inapplicable to corporal punishment in public schools. In *Sims* v. *Waln, supra,* the court dismissed an action for damages and injunctive relief arising out of facts similar to those present in the instant case, stating:

> Regarding the Eighth Amendment claim there is an initial distinction that must be made between criminal penalties and civil penalties. The distinction must be made because the *Eighth Amendment is not applicable in a civil context.* Concerning the Cruel and Unusual Punishment clause of the Eighth Amendment the Supreme Court has stated that: *"the primary purpose of that clause has always been considered, and properly so, to be directed at the method or kind of punishment imposed for the violation of criminal statutes* * * *." *Powell* v. *Texas,* 392 U.S. 514, 531–32, 88 S. Ct. 2145, 2154, 20 L. Ed. 2d 1254 (1968). *Id.* at 549 (emphasis added).

Likewise, in *Gonyaw* v. *Gray, supra,* the district court of Vermont, in dismissing an action for damages and injunctive relief against a school board which imposed corporal punishment on its students, stated:

* * * it is, of course, essential to recovery in both cases under § 1983 that the plaintiff establish an invasion of fed-

[3] Decisions discussing the applicability of the Eighth Amendment to corporal punishment administered in the public schools can be classified into three groups: (1) case holding that the Eighth Amendment does apply to corporal punishment in public schools—*Bramlett* v. *Wilson,* 495 F. 2d 714 (8th Cir. 1974); (2) cases holding that the Eighth Amendment does not apply to corporal punishment in public schools—*Sims* v. *Waln,* 388 F. Supp. 543 (S.D. Ohio 1974), and *Gonyaw* v. *Gray,* 361 F. Supp. 366 (D. Vt. 1973), and (3) cases that assume, without deciding, that the Eighth Amendment applies to imposition of corporal punishment in schools but in that instant case determine that punishment complained of was not severe enough to constitute cruel and unusual punishment—*Baker* v. *Owen* 395 F. Supp. 294 (M.D. N.C. 1975), aff'd—U.S.—, 96 S. Ct. 210, 46 L. Ed. 2d 137 (1975); *Glaser* v. *Marietta,* 351 F. Supp. 555 (W.D. Pa. 1972); *Ware* v. *Estes,* 328 F. Supp. 657 (N.D. Tex. 1971), aff'd *per curiam,* 458 F. 2d 1360 (5th Cir. 1972); *Whatley* v. *Pike County Board of Education,* C.A. 977 (N.D. Ga. 1971) (three judge court); and *Sims* v. *Board of Education,* 329 F. Supp. 678 (D. N.M. 1971).

erally protected constitutional rights * * *. *Mere tortious conduct* does not constitute a deprivation of constitutional rights under this statute.

This statute [authorizing corporal punishment] does not offend the protection against cruel and unusual punishment since this amendment provides a limitation against penalties imposed for criminal behavior. * * * Since neither plaintiff was punished for an offense which was criminal in nature, the Eighth Amendment does not proscribe the conduct assigned to the defendants. *Id.* at 368 (emphasis added.) [4]

In support of their argument that corporal punishment in a public school context is cruel and unusual punishment, appellants cite *Jackson* v. *Bishop,* 8 Cir. 1968, 404 F. 2d 571 in which the Eighth Circuit Court of Appeals enjoined the use of a strap in prisons. We do not find prisons and public schools to be analogous in the context of Eighth Amendment coverage. As discussed, *supra,* the function of the Eighth Amendment's prohibition against cruel and unusual punishments was intended to prevent the imposition of unduly harsh penalties for criminal conduct. It is not an unreasonable interpretation of the Eighth Amendment to include within its coverage discipline imposed upon persons incarcerated for criminal conduct, since such discipline is part of the total punishment to which the individual is being subjected for his crime and, as such, is a proper subject for Eighth Amendment scrutiny. To extend the *Jackson* case from a prison context to a public school situation would, however, distort the intended scope of the Amendment.[5]

[4] The district court of Vermont has recently granted jurisdiction under 28 U.S.C. § 1343(3) to entertain a claim that administration of excessive corporal punishment violated the student-claimant's right to freedom from cruel and unusual punishment. *Roberts* v. *Way,* 398 F. Supp. 856 (D. Vt. 1975). The court distinguished *Roberts* from *Gonyaw* v. *Gray, supra,* in which less severe punishment was alleged. The extent of the holding, however, was merely a finding that the claim was not so wholly insubstantial or frivolous as to divest the court of jurisdiction; the applicability of the Eighth Amendment to severe corporal punishment was not reached.

[5] Even assuming that the Eighth Amendment was equally applicable to corporal punishment imposed by school authorities, we would not necessarily adopt the holding of the *Jackson* court that corporal punishment is per se

(Continued)

We do not mean to imply by our holding that we condone child abuse, either in the home or the schools. We abhor any exercise of discipline which could result in serious or permanent injury to the child. Indeed, if the force used by defendant teachers in disciplining plaintiff was as severe as plaintiffs allege, a Florida state court could find defendants civily and criminally liable for tortious conduct exceeding the level of severity authorized by 232.27 of Fla. Stat. Ann. and by Dade County School Board policy 5144. The basis of such actions is, however, tort and criminal law, *not* federal constitutional law. We find it neither proper nor necessary to expand the Eighth Amendment beyond its intended and reasonable scope to encompass an action which is essentially based on the commission of a battery.

[5] In short, scrutiny of the propriety of physical force used by a school teacher upon his or her student should be the function of a state court, with its particular expertise in tort and criminal law questions; the administration of corporal punishment in public schools, whether or not excessively administered, does not come within the scope of Eighth Amendment protection. Because the plaintiffs do not allege facts which could support a finding that defendants have deprived them of their right to freedom from cruel and

(Continued)

cruel and unusual, since there are many practical differences between prisons and public schools that would tend to mitigate the use of such discipline in the latter institution. First, the *Jackson* court was concerned with the absence of safeguards necessary to prevent abuses in the imposition of corporal punishment by prison officials. The much greater access of school children through their parents to public opinion and to the political process, in addition to the natural restraint that generally exists when one strikes a child, deters excessive conduct by the school official administering corporal punishment. Also, central to the *Jackson* court's finding that use of a strap was cruel and unusual was its belief that such punishment, when imposed on prisoners, "offend[s] contemporary concepts of decency and human dignity." *Id.* at 579. While whipping an adult prisoner is sufficiently degrading to offend "contemporary concepts of decency," we cannot believe paddling a child, a long-accepted means of disciplining and inculcating concepts of obedience and responsibility, offends current notions of decency and human dignity. See also *Nelson* v. *Heyne*, 491 F. 2d 352 (7th Cir. 1974) in which the court held that paddling of juveniles in a correctional institute constituted cruel and unusual punishment, but that corporal punishment administered in public schools could be upheld. *Id.* at 356.

unusual punishment, neither the legal action for damages included in counts one and two nor the equitable action for injunctive relief set out in count three can lie.

III. SUBSTANTIVE DUE PROCESS

Plaintiffs allege that "the infliction of corporal punishment on its face deprives all students as well as plaintiffs * * * of 'liberty without due process of law' in violation of the Fourteenth Amendment to the United States Constitution since it is arbitrary, capricious, and unrelated to achieving any legitimate educational purpose." In essence, plaintiffs here allege a deprivation of their right to substantive due process, as this right to freedom from arbitrary governmental action has come to be known. We find this argument unpersuasive.

Statutory authority for the use of corporal punishment in Florida public schools is found by implication in § 232.27 of Fla. Stat. Ann. which provides:

> Each teacher or other member of the staff of any school shall assume such authority for the control of pupils as may be assigned to him by the principal and shall keep good order in the classroom and in other places in which he is assigned to be in charge of pupils, *but he shall not inflict corporal punishment before consulting the principal or teacher in charge of the school, and in no case shall such punishment be degrading or unnecessarily severe in its nature.* (Emphasis added.)

In addition the Dade County School Board Policy 5144, effective at the time plaintiff's cause of action arose, explicitly authorized corporal punishment, setting forth guidelines under which it was to be administered.[6]

[6] Policy 5144 provides in part:

"II. Punishment: Corporal Punishment

"Punishment in the general sense is the inflicting of a penalty for an offense. Corporal punishment is generally applied to the body of the offender or is physical punishment as opposed to other forms of punishment and is administered as a means of changing the behavior of the student. Therefore,

(Continued)

[6–9] After reviewing the record, we agree with the district court's finding that "the evidence has not shown that corporal punishment in concept, or as authorized by the school board, or as applied throughout the school system, is arbitrary, capricious, or wholly unrelated to the legitimate state purpose of determining its educational policy." The plaintiffs' right to substantive due process is

> * * * a guaranty against arbitrary legislation, demanding that the law not be unreasonable and that the means selected shall have a real and substantial relation to the object sought to be attained. The test is whether there be a matter touching the public interest which merits instant correction at the hands of the authorities and, if so, that the remedy adopted by the rule-making authorities be reasonably calcu-

(Continued)

it is important to analyze whether or not this goal will be accomplished by such action.

"Corporal punishment may be used in the case where other means of seeking cooperation from the student have failed. If it appears that corporal punishment is likely to become necessary, the teacher must confer with the principal. The principal will determine the necessity for corporal punishment and designate the time, place, and the person to administer said punishment. In any case, the student should understand clearly the seriousness of the offense and the reason for the punishment. Care should be taken that the period of time between the offense and the punishment is not so long as to cause undue anxiety in the pupil. The punishment must be administered in kindness and in the presence of another adult, at a time and under conditions not calculated to hold the student up to ridicule or shame.

"In the administering of corporal punishment, no instrument shall be used that will produce physical injury to the student, and no part of the body above the waist or below the knees may be struck. The person administering the corporal punishment must realize his own personal liabilities if the student being given corporal punishment is physically injured.

"Corporal punishment should never be administered to a student whom school personnel know to be under psychological or medical treatment unless there has been a preconference with the school psychologist or the physician."

Policy 5144 was revised extensively, effective November 3, 1971, almost ten months after this action was filed. The revision sets a maximal limit on the number of strokes which can be applied (five for elementary school children and seven for junior and senior high school children), requires punishment to be administered "posteriorly" and in no case about the head and shoulders, emphasizes consideration of the seriousness of the offense in determining the proper punishment, and requires a recording of the infraction which justified the punishment.

> lated to correct it. *Sims* v. *Board of Education*, *supra*, at 684.

Certainly, maintenance of discipline and order in public schools is a prerequisite to establishing the most effective learning atmosphere and as such is a proper object for state and school board regulation.[7] Without the existence of disciplinary sanctions for misbehavior, students who desire to learn would be deprived of their right to an education by the more disruptive members of their class. We are unwilling to hold that corporal punishment, as one of the means used to achieve an atmosphere which facilitates the effective transmittal of knowledge, has no "real and substantial relation to the object sought to be attained."

[10] Certainly the guidelines set down in Policy 5144 establish standards which tend to eliminate arbitrary or capricious elements in any decision to punish. Having determined that corporal punishment itself and corporal punishment as circumscribed by the guidelines in Policy 5144 is not arbitrary, capricious, or unrelated to legitimate educational goals, we refused to look at each individual instance of punishment to determine if it has been administered arbitrarily or capriciously. We think it a misuse of our judicial power to determine, for example, whether a teacher has acted arbitrarily in paddling a particular child for certain behavior or whether in a particular instance of misconduct five licks would have been a more appropriate punishment than ten licks. We note again the possibility of a civil or criminal action in state court against a teacher who has excessively punished a child.[8]

We emphasize that it is not this court's duty to judge the wisdom of particular school regulations governing mat-

[7] See *Sims* v. *Wain*, 388 F. Supp. 543 (S.D. Ohio 1975), in which the court stated:

"A teacher is responsible for the discipline in his school, and for the progress, conduct, and deportment of his pupils. It is his duty to maintain good order and to require of his pupils a faithful performance of their duties. To enable him to discharge such a duty effectively, he must have the power to enforce prompt obedience to his lawful commands. For this reason, in proper cases, he may inflict corporal punishment on refractory pupils." *Id.* at 546.

[8] Indeed, Policy 5144, as effective during 1970–71, provides in part: "The person administering the corporal punishment must realize his own personal liabilities if the student being given corporal punishment is physically injured."

ters of internal discipline. Only if the regulation bears no reasonable relation to the legitimate end of maintaining an atmosphere conducive to learning can it be held to violate the substantive provision of the due process laws. Paddling of recalcitrant children has long been an accepted method of promoting good behavior and instilling notions of responsibility and decorum into the mischievous heads of school children. We do not here overrule it.

IV. PROCEDURAL DUE PROCESS

Plaintiffs also allege as part of their claim for injunctive and declaratory relief that defendants have deprived the class which plaintiffs represent of its right to procedural due process. Plaintiffs argue that procedural due process requires (1) that a schedule of school regulations and punishments to be accorded for their breach be established; (2) that notice be given to the student of the offense for which he is to be punished, and (3) that a hearing with opportunity for examination and cross-examination and with a right to counsel be accorded before punishment is inflicted.

[11, 12] The concept of due process is premised upon fairness and reasonableness in light of the totality of circumstances. *Hannah* v. *Larcht,* 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed. 2d 1307 (1960); *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123, 71 S. Ct. 624, 95 L. Ed. 817 (1951). "[W]hether any protections are due depends on the extent to which an individual will be 'condemned to suffer *grievous loss.*'" *Joint Anti-Fascist Refugee Committee* v. *McGrath, supra,* at 168, 71 S. Ct. at 646 (Frankfurter, J., concurring), quoted in *Morrissey* v. *Brewer,* 408 U.S. 471, at 481, 92 S. Ct. 2593, at 2600, 33 L. Ed. 2d 484 (1972) (emphasis added). We do not believe that infliction of a paddling subjects a schoolchild to a grievous loss for which Fourteenth Amendment due process standards should be applied.

[13] In its argument for procedural safeguards, the dissent relies on *Baker* v. *Owen, supra,* a three-judge district court judgment summarily affirmed by the Supreme Court. In *Baker,* the three-judge district court upheld a North Carolina statute authorizing corporal punishment against

plaintiffs' argument that the constitutional concept of familial privacy bars school officials from spanking school children over parental objection. In addition, the court set forth certain procedural requirements to accompany the administration of corporal punishment. The Supreme Court's affirmance of this three-judge district court judgment was a summary affirmance without opinion. The appeal of that lower court judgment was brought only by the plaintiffs and the only question presented to the Supreme Court was whether parental objection could bar the use of corporal punishment by school officials; defendant state and school officials did not appeal that part of the judgment requiring procedural safeguards. Accordingly, the three-judge district court's pronouncement on procedural requirements was never before the Court and, therefore, its summary affirmance of that lower court's judgment does not bind us to a part of the judgment not appealed.[9]

In holding that procedural safeguards accompanying the use of corporal punishment in public schools are not constitutionally mandated, we are cognizant of the Supreme Court's holding in *Goss* v. *Lopez,* 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975), that an Ohio statute authorizing suspension of public school students without notice of the offense for which suspended and without opportunity for a hearing violates students' rights to procedural due process. The basis for the Court's holding that due process should

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[9] While the Supreme Court has held that lower courts are bound by summary decisions of the Supreme Court until that Court informs them otherwise, *Hicks* v. *Miranda,* 422 U.S. 332, 95 S. Ct. 2281, 45 L. Ed. 2d 223 (1975), we believe that *Hicks* can be readily distinguished from the present case. In *Hicks,* the Supreme Court was dealing with the precedential value of a dismissal for want of a substantial federal question; in its holding that such a dismissal carried the same impact as a disposition on the merits, the Court was countering the argument that the precedential value of a dismis was equivalent only to that of a denial of certiorari. The Court's holding certainly cannot be interpreted to mean that a summary affirmance by the Supreme Court of a lower court judgment is binding on questions not presented to that Court on appeal. See, *Swarb* v. *Lennox,* 405 U.S. 191, 92 S. Ct. 767, 31 L. Ed. 2d 138 (1972) (Supreme Court's affirmance of District Court judgment insofar as it refused to declare a state's statute unconstitutional does not constitute approval of other aspects and details not before Supreme Court where no cross appeal taken by defendant).

have been afforded plaintiffs was its determination that education was a substantial property interest that the State of Ohio had conferred on plaintiffs and "having chosen to extent the right to an education to people of appellees' class generally, Ohio may not withdraw that right on grounds of misconduct absent fundamentally fair procedures * * *." *Id.*, 419 U.S. at 574, 95 S. Ct. at 736, 42 L. Ed. 2d at 734.[10] Noting that a recorded suspension could harm a student's reputation and interfere with later opportunities for higher education and employment, the Court also held that a student's "liberty" interest in maintaining his good name and reputation could not be arbitrarily deprived by a suspension unattended by proper procedures. We believe that there is an important distinction in terms of the applicability of due process standards between a suspension, which involves an exclusion from the educational process itself, and a paddling, which involves no deprivation of a property interest or denial of a claim to education and which is certainly a much less serious event in the life of a child than is a suspension or an expulsion.[11] Likewise, we find no sub-

[10] In applying the "grievous loss" standard, discussed *supra*, to the present facts we are not ignoring the "de minimus" test employed in *Goss* in which the court stated: " 'Whether due process requirements apply in the first place, we must look not to the "weight" but to the nature of the interest at stake.' *Board of Regents* v. *Roth*, 408 U.S. [564], at 570–71, 92 S. Ct. [2701] at 2705–2706, 33 L. Ed. 2d 548. * * * The Court's view has long been that as long as a property deprivation is not de minimus, its gravity is irrelevant to the question whether account must be taken of the Due Process Clause." *Id.* 419 U.S. at 575, 95 S. Ct. at 737, 42 L. Ed. 2d at 735. In so holding, the court was responding to an argument that because a ten-day suspension did not subject a student to a grievous loss, the due process clause did not come into play. Thus, according to the court's reasoning, because total exclusion from the educational process is itself a substantial interest to be protected by the due process clause, the shortness of that period of exclusion cannot suspend the guarantee of procedural safeguards. There is a qualitative difference between an exclusion from the educational process, through suspension, and a routine disciplinary measure such as paddling. The infliction of a paddling, unlike the denial itself of educational benefits, does not subject the student to a "grievous loss" for which constitutionally mandated procedural safeguards apply.

[11] Indeed, this court has often recognized the applicability of the due process clause to expulsions and suspensions. *E.g.*, *Dixon* v. *Alabama State Board of Education*, 294 F. 2d 150 (5th Cir. 1961), cert. denied, 368 U.S. 930, 82 S. Ct. 368, 7 L. Ed. 2d 193 (1961) (due process applicable to a removal for

stantial interest in reputation violated by a paddling, for while a recorded suspension can indeed have a permanent adverse impact on a person's reputation and could conceivably harm that person's chance to obtain employment or higher education, we find it difficult to contend that a paddling, a commonplace and trivial event in the lives of most children, involves any such damage to reputation.

It seems to us that the value of corporal punishment would be severely diluted by elaborate procedural process imposed by this court.[12] To require, for example, a published schedule of infractions for which corporal punishment is authorized, would serve to remove a valid judgmental aspect from a decision which should properly be left to the experienced administrator. Likewise, a hearing procedure could effectively undermine the utility of corporal punishment for the administrator who probably has little time under present procedures to handle all the disciplinary problems which beset him or her. "[T]o hold that the relationship between parents, pupils, and school officials must be conducted in an adverse atmosphere and according to procedural rules by which we are accustomed in a court of law would hardly best serve the interest of any of those involved." *Whatley* v. *Pike County Board of Education, supra.* "The likelihood of the abuse of corporal punishment is minimized by the participation of parents and school boards in school affairs, and by the availability of civil and criminal sanctions against teachers who exceed the limits of moderation. In any event, it is a sanction which simply is not serious enough to require the prerequisite of a formal hearing." *Gonyaw* v. *Gray,, supra,* at 371.

In essence, we refuse to set forth, as constitutionally mandated, procedural standards for an activity which is not substantial enough, on a constitutional level, to justify the time

long enough duration to be classified as expulsion); *Black Students of North Fort Myers Jr.-Sr. High School* v. *Williams*, 470 F. 2d 957 (5th Cir. 1972) (due process applicable to a ten-day suspension).

[12] Dade County School Board Policy 5144 does contain guidelines by which corporal punishment is to be administered. It requires, for example, that the "student understand clearly the seriousness of the offense and the reason for the punishment." If the Policy guidelines are not followed, students would have redress to the School Board.

and effort which would have to be expended by the school in adhering to these procedures or to justify further interference by federal courts into the internal affairs of public schools. If a paddling of a school child subjects him to a "grievous loss" sufficient to require constitutional procedural safeguards under the Fourteenth Amendment, then conceivably a teacher's decision to keep a disobedient child after school or to give a child a failing grade in a course would inflict just as grievous a loss and would require procedures which meet constitutional standards. We do not interpret the due process clause of the Fourteenth Amendment so broadly. In so holding, we are mindful of the oft-quoted statement made by Justice Fortas in *Eppersen* v. *Arkansas*, 393 U.S. 97, 89 S. Ct. 266, 21 L. Ed. 2d 228 (1968), in which he asserted:

> Judicial interposition in the operation of the public school systems of the nation raises problems requiring care and restraint. * * * By and large, public education in our nation is committed to the control of state and local authorities. Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values. *Id.* at 104, 89 S. Ct. at 270, 21 L. Ed. 2d at 234.

Affirmed.

GEWIN, Circuit Judge (concurring in the result).

Although I am in full agreement with the majority's resolution of the merits of this case, it is my considered judgment that the jurisdictional statement in the opinion is not in accord with recent decisions of our court. Accordingly, I concur in the majority's affirmance of the district court's dismissal of the complaint, but do not fully agree with the jurisdictional statement.

The majority is quite correct in its conclusion that school boards are often considered to be either arms of or in the nature of municipalities. Hence, under the "non-person" rule of *City of Kenosha* v. *Bruno*, 412 U.S. 507, 93 S. Ct. 2222, 37 L. Ed. 2d 109 (1973), school boards as entities are not subject to suit under § 1983 [1] and its jurisdictional

[1] 42 U.S.C. § 1983.

statute, § 1343.[2] Likewise, the majority opinion is equally correct in its conclusion that a school superintendent is a "person" liable to suit under § 1983.

However, I disagree with the majority's indication that merely because § 1983 jurisdiction over the school board in this case does not exist, there is a lack of jurisdiction in every case involving school boards. We have recently held [3] that, despite the fact that § 1983 jurisdiction over a school board may not be present in a given instance, jurisdiction may be proper under § 1331.[4]

Since I agree with the majority that appellants have not asserted a constitutional claim for relief,[5] the dismissal was proper because § 1331 is of no aid in the absence of such a claim. I do not agree that the mere failure to state a § 1983 claim automatically defeats federal jurisdiction under § 1331.

GODBOLD, Circuit Judge, with whom BROWN, Chief Judge, joins (dissenting):

I agree with Judge Rives that arbitrary and excessive corporal punishment is a denial of substantive due process, although I am not convinced that the punishment in this

[2] 28 U.S.C. § 1343.

[3] *E.g.*, *Roane* v. *Callisburg Independent School District*, 511 F. 2d 633, 635 n. 1 (5th Cir. 1975) (citations omitted); *Kelly* v. *West Baton Rouge Parish School Board*, 517 F. 2d 194, 197 (5th Cir. 1975) (citations omitted). Other circuits have utilized the same rationale in holding that *Kenosha* does not bar § 1331 jurisdiction over a municipality, *Brault* v. *Town of Milton*, 527 F. 2d 730 (2d Cir. 1975) [No. 74-2370, Feb. 24, 1975], or a county, *Cox* v. *Stanton*, 529 F. 2d 47 (4th Cir. 1975) [No. 74-2218, Oct. 6, 1975].

[4] 28 U.S.C. § 1331.

[5] Although we have not hesitated to find due process and equal protection violations in a variety of circumstances involving schools, *e.g.*, *Lansdale* v. *Tyler Junior College*, 470 F. 2d 659 (5th Cir. 1972) (en banc) (potential college students not allowed to register because of hair length), *cert denied*, 411 U.S. 986, 93 S. Ct. 2268, 36 L. Ed. 2d 964 (1973), certainly we must have scrupulous regard for principles of federalism in extending the reach of "constitutional common law." *See generally* Monaghan, *Constitutional Common Law*, 89 Harv. L. Rev. 1, 45 (1975) ("The general guarantees of due process and equal protection are so indeterminate in character that to develop on their authority a body of subconstitutional law would be to go beyond *implementation* to recognize a judicial power to create a sub-order of liberties without any ascertainable constitutional reference points") (emphasis in original).

case rose to the level of such a violation. I, therefore, disagree with the majority's statement that it would be an abuse of our judicial power to determine whether punishment inflicted in a particular case exceeds constitutional limits. This is a mere rule of convenience, made palatable by characterizing the issue as the difference between five and ten licks. I doubt that the majority really means what it says, and I suspect that if in a future case the punishment inflicted has broken the victim's leg we will face the issue and hold that substantive due process has been violated.

RIVES, Circuit Judge, with whom GOLDBERG and AINSWORTH, Circuit Judges, join (dissenting):

With deference to the en banc majority, I adhere to the original majority opinion and decision reported as *Ingraham* v. *Wright,* 5 Cir. 1974, 498 F. 2d 248, and make a few additional comments. The district court's "Findings of Fact" were quoted in the original opinion at 498 F. 2d 253, 254, and the facts were more fully detailed at 498 F. 2d 254–258. At the close of the plaintiffs' case the district court dismissed all three counts, holding as to Count Three, the class action, that the plaintiffs had shown no right to relief, and as to Counts One and Two that a jury could not lawfully find that either James Ingraham or Roosevelt Andrews had sustained a deprivation of federal constitutional rights. The en banc court now affirms. On original hearing we reversed and remanded for further proceedings. Reconsidering the law and the undisputed facts, I remain convinced that our original decision is right.

I. Baker v. Owen

In the present case the panel's majority opinion and Judge Morgan's dissenting opinion were entered on July 29, 1974 (498 F. 2d 248). Since then another case involving the corporal punishment of a sixth grader, Russell Carl Baker, has been heard by a three-judge District Court of the Middle District of North Carolina on January 13, 1975, opinion entered April 23, 1975, judgment entered June 13, 1975, and on appeal judgment affirmed by the Supreme Court on October 15, 1975. *Baker* v. *Owen,* M.D.N.C. 1975, 395 F. Supp. 294, *aff'd*——U.S.——, 96 S. Ct. 210, 46 L. Ed. 2d 137. The Supreme Court did not leave to implication but ordered in express terms that "the *judgment* is affirmed." (Emphasis

added.) The judgment of the three-judge district court, entered nearly two months after the entry of its opinion, was not included in the report of the opinion. The judgment reads as follows:

> Now, therefore, consistent with the amended opinion it is ORDERED, ADJUDGED, AND DECREED that:
>
> 1. North Carolina General Statute § 115–146, on its fact, is declared not to be in violation of the Constitution of the United States.
>
> 2. Defendants, their agents and servants and their successors are permanently enjoined in the administration of corporal punishment in the public schools of the State of North Carolina to conform to the minimal due process requirements of the Fourteenth Amendment as follows:
>
> "(a) Except for those acts of misconduct which are so anti-social or disruptive in nature as to shock the conscience, corporal punishment may never be used unless the student was informed beforehand that specific misbehavior could occasion its use, and, subject to this exception, it should never be employed as a first line of punishment for misbehavior. The requirements of an announced possibility of corporal punishment and an attempt to modify behavior by some other means—keeping after school, assigning extra work, or some other punishment—will insure that the child has clear notice that certain behavior subjects him to physical punishment.
>
> "(b) A teacher or principal may punish corporally only in the presence of a second school official (teacher or principal), who must be informed beforehand and in the student's presence of the reason for the punishment. The student need not be afforded a formal opportunity to present his side to the second official; this requirement is intended only to allow a student to protest, spontaneously, an egregiously arbitrary or contrived application of punishment.
>
> "(c) An official who has administered such punishment must provide the child's parent, upon request, a

written explanation of his reasons and the name of the second official who was present.

The above minimal due process requirements are intended to prevent or dissuade the state from further elaboration upon necessary requirements in order to accomplish fairness in administration.

3. The parties shall bear their own costs.

As to paragraph numbered 1 of the judgment, the opinion at 395 F. Supp. 303 shows that the plaintiffs made no claim "that corporal punishment *per se* violates the eighth amendment prohibition of unusual punishment"; that "His teacher, a female, administered two licks to his buttocks with a wooden drawer divider * * *," and that

> In short, this record does not begin to present a picture of punishment comparable to that in *Ingraham, supra* [5 Cir. 1974, 498 F. 2d 248], at 255–59, or in *Nelson* v. *Heyne,* 491 F. 2d 352 (7th Cir. 1974), which we believe indicate the kinds of beatings that could constitute cruel and unusual punishment if the eighth amendment is indeed applicable. 395 F. Supp. at 303.

The district court posed, but did not decide the issue of whether the Eighth Amendment applies to the corporal punishment of school children. 395 F. Supp. at 303.

As to paragraph numbered 2 of the judgment, the district court's opinion made clear the substantive due process constitutional right which made it necessary to inquire as to the type of procedure to be employed:

> The initial inquiry must be whether Russell Carl has a liberty or property interest, greater than de minimis, in freedom from corporfal punishment such that the fourteenth amendment requires some procedural safeguards against its arbitrary imposition. Only if such an interest is found must we proceed to an inquiry as to the type of procedure to be employed. See generally *Goss* v. *Lopez, supra,* 419 U.S. [565] at 574, 95 S. Ct. 729 [1975]; *Board of Regents* v. *Roth,* 408 U.S. 564, 570–71, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); *Sniadach* v. *Family Finance Corp.,* 395 U.S. 337, 342, 89 S. Ct. 1820, 23 L. Ed. 2d 349 (1969) (Harlan, J., concurring).

> We believe that Russell Carl does have an interest, protected by the concept of liberty in the fourteenth amendment, in avoiding corporal punishment. This conclusion is compelled by a conflux of many premises and postulates. * * *
>
> Having concluded, upon due consideration of all the above factors, that North Carolina school children have a liberty interest, we must decide what procedural safeguards should protect it. 395 F. Supp. at 301, 302.

Relevant to the present appeal, the Supreme Court in affirming the judgment of the district court held that so long as the force used is reasonable, corporal punishment does not violate the Eighth Amendment. It left undecided the issue of whether the Eighth Amendment applies to the corporal punishment of school children.

Acknowledging my indebtedness to Judge Morgan for calling to my attention that only the plaintiffs appealed to the Supreme Court and that no appeal was taken from paragraph 2 of the judgment, I agree that the Supreme Court's affirmance of the judgment did not bind this Court as to paragraph 2. Nonetheless, I submit that paragraph 2 was correctly decided by the district court for the reasons well stated in its opinion.

Some further discussion of the several issues seems warranted.

II. CRUEL AND UNUSUAL PUNISHMENT

The en banc majority holds that the cruel and unusual punishment clause of the Eighth Amendment has no application to corporal punishment administered to public school children by teachers or administrators regardless of the circumstances or the severity of the punishment. I agree with the contrary holding of the Eighth Circuit in *Bramlet* v. *Wilson,* 1974, 495 F. 2d 714, 717, for the reasons stated in footnote 20 to the original opinion, 498 F. 2d at 259, 260.

The en banc majority makes brief reference to the legislative history of the Eighth Amendment. That history is sketchy and inconclusive at best. The first ten amendments

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were proposed to the legislatures of the several states by the First Congress on September 25, 1789, and were ratified December 15, 1791.

In *Brown* v. *Board of Education*, 1954, 347 U.S. 483, at 489, 490, 74 S. Ct. 686, 98 L. Ed. 873, the Supreme Court discussed the history of the Fourteenth Amendment with respect to segregated schools as of the time of the adoption of that Amendment in 1868. The rationale of that discussion applies with multiplied intensity to the history of the Eighth Amendment as of 1791 with respect to corporal punishment in the public schools. As the *Brown* opinion demonstrates, public education was in its infancy in 1868. In 1791 it was almost nonexistent.[1] Chief Justice Warren, writing for a unanimous Court in *Brown*, said:

> In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy* v. *Ferguson* [163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256] was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws. 347 U.S. at 492–493, 74 S. Ct. at 691.

Similarly, in *Trop* v. *Dulles*, 1958, 356 U.S. 86, 101, 78 S. Ct. 590, 598, 2 L. Ed. 2d 630, with specific reference to the constitutional phrase "cruel and unusual" as used in the Eighth Amendment, Chief Justice Warren said: "The Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."

In *Nelson* v. *Heyne*, 7 Cir. 1974, 491 F. 2d 352, *cert. denied* 417 U.S. 976, 94 S. Ct. 3183, 41 L. Ed. 2d 1146, that expression was quoted and applied by the Seventh Circuit to a "[s]chool, located in Plainfield, Indiana [which] is a medium security state correctional institution for boys twelve to eighteen years of age, *an estimated one-third of whom are*

[1] At the time of the American Revolution, schools were predominantly private and denominational. 7 Encyclopedia Britannica, History of Education 991 (1970). The main outlines of the public educational system were not achieved until the middle of the Nineteenth Century. *Id.* at 992.

non-criminal offenders." 491 F. 2d at 353, 354 (emphasis added). The Seventh Circuit held that corporal punishment consisting of beating juveniles with a fraternity paddle, causing painful injuries, was cruel and unusual punishment. While it recognized that the school was both a correctional and an academic institution (491 F. 2d at 354), it did not exclude from its holding the "non-criminal offenders."

It is likely that in 1791 the federal government meted out punishment solely in retribution for crimes. The scope of the Amendment was greatly expanded after it became binding on the states through the Fourteenth Amendment. *Louisiana ex rel. Francis* v. *Resweber*, 1947, 329 U.S. 459, 463; *Robinson* v. *California*, 1962, 370 U.S. 660, 666, 82 S. Ct. 1417, 8 L. Ed. 2d 758. The Seventh Circuit in *Nelson* v. *Heyne*, *supra*, aptly called attention that,

> *In re Gault*, 387 U.S. 1, 15–16, 87 S. Ct. 1428, 1437, 18 L. Ed. 2d 527 (1967), the Court stated:
>
> "'The early reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. * * * The child was to be "treated" and "rehabilitated" and the procedures, from apprehension through institutionalization, were to be "clinical" rather than punitive.'" 491 F. 2d at 358.

Thus it is not surprising that there should be so little in the history of the Eighth Amendment relating to its intended effect on corporal punishment in the public schools. Today, government has greatly expanded and provides a multitude of social institutions and public services. The administration of punishment is no longer confined to a criminal setting. It is now employed in public schools, *see Bramlet* v. *Wilson*, *supra;* homes for delinquents, *see Nelson* v. *Heyne*, *supra*, *Morales* v. *Turman*, E.D. Tex. 1974, 383 F. Supp. 53, 70–72, and *Collins* v. *Bensinger*, N.D. Ill. 1974, 374 F. Supp. 273; mental institutions, see *Welsch* v. *Linkins*, D. Minn. 1974, 373 F. Supp. 487; and even in processing passport applications, see *Trop* v. *Dulles*, *supra*, 356 U.S. at 88, 78 S. Ct. 590. To paraphrase from Chief Justice Warren in *Brown*, *supra*, 347 U.S. at 492, 74

S. Ct. 686, in approaching this problem, we cannot turn the clock back to 1791.

The majority's other objection to applying the cruel and unusual punishment clause of the Eighth Amendment to this case appears to be one of federalism:

> * * * if the force used by defendant teachers in disciplining plaintiff was as severe as plaintiffs allege, a Florida state court could find defendants civilly and criminally liable for tortious conduct exceeding the level of severity authorized by 232.27 of Fla. Stat. Ann. and by Dade County School Board policy 5144. The basis of such actions is, however, tort and criminal law, *not* federal constitutional law. We find it neither proper nor necessary to expand the Eighth Amendment beyond its intended and reasonable scope to encompass an action which is essentially based on the commission of a battery. 525 F. 2d 915.

It has been the province and duty of the federal courts since *Marbury* v. *Madison*, 1803, 5 U.S. (1 Cranch) 137, 2 L. Ed. 60, to interpret the Constitution and protect constitutional rights. The presence of alternative remedies in state courts should not deter federal judges from their primary duty of defending and supporting the Constitution. *Cf. Monroe* v. *Pape*, 1961, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492. The claims for relief here involved were brought by plaintiffs under 42 U.S.C. § 1983, which derives from the Civil Rights Act of 1871. In the landmark case construing § 1983, *Monroe* v. *Pape*, *supra*, the complaint alleged, *inter alia*, that thirteen Chicago police officers broke into the plaintiffs' home in the early morning, routed them from bed, made them stand naked in the living room, and ransacked every room, emptying drawers and ripping mattress covers. 365 U.S. at 169, 81 S. Ct. 473. Like the corporal punishment in our present case, these acts were, among other tortious conduct, "essentially based on the commission of a battery." The possibility of criminal law proceedings and tort claims against these policemen in state court was found to be no answer, as the federal remedy provided by § 1983 is supplementary to any state remedy. *Id.* at 183, 81 S. Ct. 473. On that score, *Monroe* v. *Pape*, *supra*, was followed by *McNeese* v. *Board of Education*, 1963, 373 U.S. 668, 671, 672, 83 S. Ct. 1433, 10 L. Ed. 2d 622, and by many decisions of the courts of appeals and of the district courts, some of which are collected in 42 U.S.C. § 1983 n. 500. I cannot escape the conclusion that these school children have a constitutional right to freedom from cruel and unusual punishment when applied under color of state law, and that it is our duty as federal judges to enforce that right.

III. SUBSTANTIVE DUE PROCESS

The district court found that "'alternative measures in use range from parent and student conferences, the use of guidance counselors and psychologists, where available, to suspension and expulsion.'" (498 F. 2d at 264. See also footnote 32 which follows.) In the original panel majority opinion, we noted that,

> The defendants apparently concede that corporal punishment in Dade County is a relatively serious punishment. In their brief they state that 'Corporal punishment in the public schools of Dade County, Florida, is a last resort means of discipline as an alternative to suspension or expulsion * * *.' (Defendants' Brief, p. 17.) 498 F. 2d at 267.

The administration of cruel and severe corporal punishment can never be justified. The circumstances and severity of the beatings disclosed by the presently undisputed evidence amounted to arbitrary and capricious conduct unrelated to the achievement of any legitimate educational purpose. Such conduct, exercised under color of state law, deprived the plaintiffs of both property and liberty without due process of law.

I submit that the en banc majority errs in the following part of its opinion:

> Having determined that corporal punishment itself and corporal punishment as circumscribed by the guidelines in Policy 5144 is not arbitrary, capricious, or unrelated to legitimate educational goals, we refuse to look at each individual instance of punishment to determine if it has been administered arbitrarily or capriciously. We think it a misuse of our judicial power to determine, for example, whether a teacher

has acted arbitrarily in paddling a particular child for certain behavior or whether in a particular instance of misconduct five licks would have been a more appropriate punishment than ten licks. We note again the possibility of a civil or criminal action in state court against a teacher who has excessively punished a child.[8]

[8] Indeed, Policy 5144, as effective during 1970–71, provides in part: 'The person administering the corporal punishment must realize his own personal liabilities if the student being given corporal punishment is physically injured.' "

525 F. 2d p. 917. That is in effect to hold that corporal punishment more severe than that "circumscribed" by the Florida Statute § 232.27 and by Dade County School Board Policy 5144 is not done under color of state law. Obviously the conduct of public school teachers or administrators purportedly exercised under authority granted by a state statute and school board regulation is not *excluded* from federal constitutional scrutiny simply because the severity of the beatings exceeded the prescription of the state law. That is implicitly, if not expressly, held in *Baker* v. *Owen, supra. See also Jackson* v. *Bishop,* 8 Cir. 1968, 404 F. 2d 571, 579, 581, discussed in the original panel opinion at 498 F. 2d 261, 262 n. 26. In *United States* v. *Classic,* 1941, 313 U.S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368, a criminal action against Louisiana election officials for falsifying election returns, the Supreme Court held that defendants were acting under color of state law when they falsified the returns. These acts, the Court found, were committed "in the course of their performance of duties under the Louisiana statute requiring them to count the ballots, to record the result of the count, and to certify the result of the election." 313 U.S. at 325–326, 61 S. Ct. at 1042–1043. The Court further stated that:

> Misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law. [Citations omitted.] *Id.* at 326, 61 S. Ct. at 1043.

In *Monroe* v. *Pape, supra,* this definitional view of the words "under color of" was adopted for the civil rights action provided by 42 U.S.C. § 1983. 365 U.S. at 184, 185, 61 S. Ct. 1031. Clearly, the teachers and administrators who administered the spankings in this case did so under color of state law. The fact that they might have misused the power vested in them by the state to administer corporal punishment by inflicting more blows and blows more severe than prescribed does not alter the basic fact that these beatings were performed by officials clothed with state authority.

Monroe v. *Pape, supra,* in discussing the legislative history of the Civil Rights Act which gave birth to 42 U.S.C. § 1983, commented:

> * * * the remedy created was not a remedy against it [the Ku Klux Klan] or its members but against those who representing a State in some capacity were *unable or unwilling* to enforce a state law.
>
> * * * * * *
>
> There was, it was said, no quarrel with the state laws on the books. It was their lack of enforcement that was the nub of the difficulty. (Emphasis that of the Court.) 365 U.S. at 175–176, 81 S. Ct. at 478.

Likewise, in the present case, there is no quarrel with the restrictions on the severity of corporal punishment expressed in the Florida Statute 232.27 and those stated in the Board Policy 5144. "It was their lack of enforcement that was the nub of the difficulty." 365 U.S. at 176, 81 S. Ct. at 478. The district court found that

> "There has been a rather widespread failure to adhere to School Board policy regarding corporal punishment. Teachers have punished students without first consulting with their respective principals. More blows have been administered to students than authorized by the policy." 498 F. 2d at 254.

The original panel properly deemed it "more important to know how corporal punishment is actually administered than to know the relevant rules or regulations." 498 F. 2d at 261. The en banc majority would separate sharply the moderate

kind of corporal punishment authorized by the Florida Statute and the Board Policy from the severe beatings administered to the plaintiffs Roosevelt Andrews and James Ingraham and to a few other students.

The original panel recognized the difficulty, or perhaps impossibility, of controlling the severity of corporal punishment (498 F. 2d at 261,262 n. 26). I submit that the arbitrary, excessive and severe corporal punishment disclosed by the plaintiffs' evidence, thus far undisputed, amounts to a denial of substantive due process of law.

IV. PROCEDURAL DUE PROCESS

In the light of the district court's opinion in *Baker* v. *Owen, supra,* it seems clear that the plaintiffs have been denied procedural due process. The circumstances and severity of the beatings disclosed by the plaintiffs' evidence were such as to require the basic right to a hearing of some kind under either the "severe and grievous" or the "de minimis" test. The two tests were contrasted in the latest Supreme Court pronouncement on procedural due process, *Goss* v. *Lopez,* 1975, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725, and the de minimis test was adopted, "that as long as a property deprivation is not *de minimis,* its gravity is irrelevant to the question whether account must be taken of the Due Process Clause." 419 U.S. at 576, 95 S. Ct. at 737. (citations omitted).

In the present posture of this case, the undisputed evidence discloses much more than a de minimis deprivation of property rights. It shows deprivations of liberty, probability of severe psychological and physical injury, punishment of persons who were protesting their innocence, punishment for no offense whatever, punishment far more severe than warranted by the gravity of the offense, and all without the slightest notice or opportunity for any kind of hearing. Repetition from a few examples should suffice. James Ingraham claimed that he was innocent and refused to be paddled. Principal Wright administered at least twenty licks,[2] while Assistant Principals Deliford and Barnes

[2] Four times the five licks held to constitute cruel and unusual punishment in *Nelson* v. *Heyne, supra,* 491 F. 2d at 354.

held James by his arms and legs and placed him struggling face down across a table. "The district court found that James Ingraham 'received 20 licks with a wooden paddle, which produced a painful and serious hematoma on his buttocks.' (R. 1561)." 498 F. 2d at 256 n. 10. "On October 14, eight days after the paddling, this doctor indicated that James should rest at home 'for next 72 hours.' James testified that it was painful even to lie on his back in the days following the paddling, and that he could not sit comfortably for about three weeks (Tr. 149)." 498 F. 2d at 256. Was James' loss of more than 10 days from school any less a deprivation of property because it resulted from a beating instead of a formal suspension?

Roosevelt Andrews' numerous paddlings were for offenses no more serious than being late or not "dressing out" (498 F. 2d at 256). Roosevelt on one occasion insisted that he was innocent and refused to bend over. Barnes pushed him against the urinals and hit him on his arm, back and neck. Roosevelt complained to Principal Wright, but to no avail (498 F. 2d 257).

Daniel Lee was struck four or five times on the hand for no offense whatever. His hand was X-rayed and, according to Daniel, a bone in his right hand was found to be fractured. The district judge observed an enlargement of his right knuckle (498 F. 2d 258). Other instances of violation of procedural due process are set out in 498 F. 2d at 258, 259. The brutal facts of this case should not be swept under the rug. Clearly, according to the presently undisputed evidence, the plaintiffs have been subjected to cruel and unusual punishment. Under color of state law, they have been arbitrarily deprived of both property and liberty. Even more clearly, they have been denied procedural due process.

The precedent to be set by the en banc majority is that school children have no federal constitutional rights which protect them from cruel and severe beatings administered under color of state law, without any kind of hearing, for the slightest offense or for no offense whatsoever. I strongly disagree and respectfully dissent.

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-6527

JAMES INGRAHAM, BY HIS MOTHER AND NEXT FRIEND, ELOISE INGRAHAM, ET AL., PETITIONERS

v.

WILLIE J. WRIGHT, I, ET AL.

On petition for writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted, limited to Questions 1 and 2, presented by the petition, which read as follows:

> 1. Does the infliction of severe corporal punishment upon public school students, absent notice of the charges for which punishment is to be inflicted and an opportunity to be heard, violate the due process clause of the Fourteenth Amendment?
>
> 2. Does the cruel and unusual punishment clause of the Eighth Amendment apply to the administration of discipline through severe corporal punishment inflicted by public school teachers and administrators upon public school children?

MAY 24, 1976.

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